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No. _____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

EDDIE BURRELL, ET AL.,
APPELLANTS

v.

WILLIAM A. ALLAIN, GOVERNOR OF MISSISSIPPI,
ET AL.,
APPELLEES

On Appeal from the United States District Court for the Southern District of Mississippi

APPENDIX

*MICHAEL B. WALLACE
E. CLIFTON HODGE, JR.
JEAN HOGAN SANSING

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APPENDIX A

United States District Court
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

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CIVIL ACTION NO. J86-0373(L)

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December 18, 1987

Eddie Burrell, et al.,
Plaintiffs

—

William A. Allain, et al.
Defendants

—

OPINION OF THE COURT

Honorable E. Grady Jolly, Jr., Honorable Tom S. Lee, Honorable Henry T. Wingate, Jackson, Mississippi, December 18, 1986.

—

Appearances:
For the Plaintiffs:
Mr. Michael B. Wallace
Mr. E. Clifton Hodge, Jr.

For the Defendants:
Mr. T. Hunt Cole
Mr. Richard Jones
Mr. Robert Sanders

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Judge Jolly:

This opinion is going to probably be a little lengthy, so the Marshal will keep the door closed. Unless there is an emergency, we would ask that you not leave or no one enter while the opinion is being delivered. And you're going to have to also bear with me a little bit because I have a lot of papers here. You can imagine that there are a lot of changes and switches and improvision when you have three judges, all with pretty strong opinions about what ought to be said; and I'm hoping that I have put together here something that will suit us all after we have conferred about it.

The Grand Gulf Nuclear Power Plant is located in Claiborne County and is the only existing and operating nuclear electrical generating plant in Mississippi. From 1975 till 1985, the assessed value of Grand Gulf rose dramatically from 2.3 million to about 370 million dollars. The 1975 assessment produced 143 thousand dollars in revenue to Claiborne County, and the 1985 assessment produced somewhere around 14 million dollars.

In 1986 the true value of Grand Gulf is approximately three billion dollars, and its assessed valuation is approximately 700 million dollars. The assessed value of Grand Gulf is more than 25 times higher than the next non-nuclear generating facility in the affected MP&L service area. The next highest valued non-nuclear generating facility in the state is valued at less than one-tenth the value of Grand Gulf and constitutes only a relatively small portion of the assessed value of the county in which it is located.

The utility pays property taxes to Claiborne County which are passed through to consumers in the service district in the form of higher electical bills. Prior to the legislative enactment, the other 44 counties and municiplalities in the service area received no share of the ad valorem tax revenue of Grand Gulf. It was all paid to Claiborne County. At the same time, the property taxes generated by Grand Gulf created a trove of about 13.5 million dollars annually for the local government of Claiborne County, which has a population of about 12,000 people; and that compares to a previous annual income for this small county, according to the testimony, of about 600 thousand dollars. So that's the background that we view the subsequent events.

Efforts to divert tax money from Grand Gulf to other counties go back almost ten years. Jay Disharoon, who then represented

Claiborne County in the House of Representatives, testified that he managed to prevent these measures from coming to a vote in the house in 1977, 1978 and 1979. In 1980 the House Ways and Means Committee held its first meeting on proposals to divert tax money from Grand Gulf, and Grand Gulf came to the floor in 1983 but was defeated by Senator Disharoon and his allies in the Senate.

In the 1986 session, the Mississippi legislature enacted House Bill 388, which exempted nuclear power plants from local ad valorem taxes, levying a special state in-lieu tax and providing for distribution of the tax revenues to Claiborne County 15 percent and the State General Fund 10 percent and to other counties in the MP&L district.

After numerous attempts to compromise on the Grand Gulf issue, a special House of Representatives select committee on property taxation reported HCR 41, which amended Section 112 of the Mississippi Constitution. In general terms, HCR 41 established five classes of property, tax assessment ratios, and further specifically provided that the legislature could deny or limit a county's authority to levy taxes on nuclear plants, and that it could provide for distrubution of such revenue. In final form, HCR 41 passed both houses of the legislature in overwhelming fashion.

The referendum was set for June 3, 1986, and the legislature's stated purpose in setting the June election was to permit the county tax assessors to adjust their assessment roles in July and August for the next tax year in case the proposed amendment was passed. A delay in the referendum vote until November would have meant that reclassification and assessment ratio portions of HCR 41 would have been delayed until 1988, the next tax year. We do note that during the same June election, voters were also asked to consider a second proposed constitutional amendment: HCR 63 that was unrelated to the Grand Gulf issue.

With respect to this individual action before us, nine individual plaintiffs brought this action on May 23, 1986, seeking to enjoin the June 3 election until preclearance by the Attorney General could be obtained, pursuant to Section 5 of the Voting Rights Act. This three-judge court found a violation of Section 5 with regard to the date of the election, in that it constituted a change in a practice or standard as provided in Section 5 of the Voting

Rights Act. We did not, however, enjoin the election but did enjoin the implementation of the constitutional amendment until the Attorney General's approval was obtained, and that approval was obtained in July 10, 1986, and the court dissolved the injunction at that time.

Since the election and since the original Complaint was filed, the plaintiffs have filed four Amended Complaints. This case was tried on November 24 through November 26, 1986.

The issues that were presented to us at trial for our determination are the Section 5 issues relating to, one, the date of the election that was in June instead of November; two, certain ballots in certain counties were alleged not to contain the full text of HCR 41 as required by State law, and that was alleged to be a change that had not been precleared under Section 5. The plaintiffs also contended that the amendment's establishment of five property tax classes and its special treatment of nuclear plants constituted a change within the meaning of Section 5 that had not been precleared. They also alleged that the proposed amendment contained multiple amendments in violation of the Mississippi Constitution that requires constitutional amendments to be voted on one amendment at a time, and finally they alleged that Section 5 of the Voting Rights Act was violated when the defendant did not preclear the amendment provision requiring a simple majority instead of a two-thirds majority vote on tax and revenue matters.

In addition to Section 5 issues, the plaintiffs alleged a violation of Section 2 of the Voting Rights Act, the primary claim in connection with Section 2 being that the black voters had been denied equal access to the political process because they had been denied access to equal information because of the shortened period of campaign before the election.

Plaintiffs also alleged in issues that we've got to dispose of today that constitutional rights of the plaintiffs were violated—that is, the Fourteenth Amendment and the Fifteenth Amendment rights—were violated by the legislation.

Let me address first the Section 5 issues, because they all, from our point of view, can be simply disposed of.

First, with respect to the Section 5 violation that is alleged in connection with the election being held in June instead of November. It is true, of course, that a violation of Section 5

occurred. An election was held in June instead of November without having been precleared by the Justice Department. It is also true, as I earlier indicated, however, that that change from November to June was later cleared by the Justice Department after the fact of the election.

Plaintiffs content that even though the Justice Department has, in effect, approved the change in the dates of the election, we should continue to consider the effects of holding the election in June instead of November because a violation did occur and there may be equitable grounds for some relief as a result of that violation.

With respect to that violation, we deny any relief for the Section 5 violation as it relates to the election date change on grounds that reasons or bases for equitable relief have not been presented that are alleged to have caused an injury resulting from a violation of Section 5 which are independent of Section 2 or which are independent of the alleged constitutional violations. Thus, the issues that are relevant to any relief that the plaintiffs may be entitled to as a result of the violations of Section 5 will be treated and considered when we take up the alleged violations of Section 2. So we dismiss that Section 5 claim.

Second: Plaintiffs also allege that Section 5 of the Voting Rights Act has been violated because a change occurred when certain counties did not print the full text of the constitutional amendment on the ballots as is required by State law. We find, based on the Master's report, certain ballots in certain counties did not contain the full text of the proposed amendment, although the Mississippi state law required that the proposed constitutional amendment be printed in full on the ballot; but these alleged violations occurred, apparently, in counties where automatic or mechanical voting machines are used, and the text of the amendment was not printed over the lever that related to the constitutional amendment. Apparently, I suppose, there was no room to print the text in full; however, we do find that the full text of the constitutional amendment was posted in the polling places where this alleged violation occurred.

We also note that the witnesses from the Secretary of State's office testified that the amendment was printed and published in full in each of the daily and weekly papers in the counties and cities in the state of Mississippi. But in any event, we do not find

that these omissions constituted a change within Section 5, and we rely for that proposition on the rationale of *United States v. Saint Landry Parish*, 601 F.2d 859, which held that actions of State officials that are in conflict with the State's required procedures are not a change enacted or administered by the State within the meaning of Section 5, and therefore the subject matter of the failure to print the text on all of the ballots is not within the ambit of Section 5 of the Voting Rights Act.

The third Section 5 claim that the plaintiffs allege is that HCR 41 violated Section 5 of the Voting Rights Act in establishing five property tax classes and special tax treatment of nuclear plants in that it authorizes the legislature to withdraw the taxing authority from the county, and we dismiss that claim on the grounds that it does not state a standard practice, procedure, prerequisite or voting qualification under Section 5 of the Voting Rights Act.

Fourth: The plaintiffs have alleged that Section 5 of the Voting Rights Act was violated by the method of amendment that was utilized in this election, because more than one article of the Constitution was amended in a single amendment.

In the first place, we do not necessarily read the State Constitution to preclude what the State has done in this case; and in the second place, we hold that this, under the rationale of *United States v. Saint Landry Parish,* is not change that is within the meaning of Section 5 of the Voting Rights Act. We also note that it is a matter that has been litigated in the State Court and is primarily a matter of State law and not a concern of ours today.

Fifth: Plaintiffs allege that HCR 41 violates Section 5 of the Voting Rights Act in that it allows a simple majority rather than a two-thirds majority of the legislature to provide for taxation on nuclear plants. We dismiss this claim on grounds that it does not allege a change in a voting standard, practice, procedure, qualification or prerequisite within the meaning of Section 5 of the Voting Rights Act and does not come within the ambit of that statute.

Next let me turn to the constitutional issues that have been raised by the plaintiffs in this case.

The theories, as I understand them, and the pleadings and briefs and Complaints in this case are voluminous; and everything from

the bottom to the top has been alleged in this case, and it's kind of hard to keep it all straight; but as I understand it and as I'm able to gather from the briefs and the arguments of the parties and the evidence presented, the theory of a violation of the Constitution relates to the motivation of the legislature in enacting HCR 41 and HB 388, I believe it is—but in, anyway, enacting the laws that effected the shift of the tax dollars from Claiborne County.

The second theory is that HCR 41 property classifications are racially discriminatory because it has an impact that is more hard-felt on minorities and poor people than on whites; and third, as I understand the argument, not strongly pressed, the election date somehow violates the Fifteenth Amendment to the Constitution in that it abridged the rights of minorities to vote.

First with respect to the motivation of the legislature in passing this legislation, I will present what is my understanding, in brief, of the key points of the evidence that the plaintiffs and the defendants have adduced in this case with respect to the motivation of the legislature.

The plaintiffs' witness John Paul Markham, Jr., testified with respect to HCR 41 that blacks were discriminated in several respects with regard to the property classification proposed in that amendment. With respect to class one, single-family residences, he testified that whites got the benefit from this particular reduction, the supposed reduction in taxes, because their homes are more highly valued and because more whites own homes than blacks. With respect to class two, he testified that blacks were discriminated against because in taxing rental property, landlords usually passed the tax on to the renters and that blacks constitute a greater number of renters, proportionately, than do whites. And finally, with respect to class five, he testeified that the blacks were discriminated against by raising taxes on motor vehicles while reducing taxes on residences because there were proportionately more black owners of vehicles than black owners of residences.

Charles Shepphard, a member of the House of Representatives from Claiborne County, testified with respect to this legislation that he was told not to bring a whole bunch of blacks to the Capitol to demonstrate in favor of Claiborne County's position when the committee was considering the Grand Gulf bill in 1980;

and he consequently limited to 20 the number of citizens that he brought to that hearing.

It was further suggested in these committee hearings that Claiborne County was wasting its money and did not know how to manage its funds, and this was indicated by Representative Stubbs, according to the testimony of Representative Shepphard, when he noted that Claiborne County had come to a ball tournament in buses with stereo music. He also indicated, as evidence that the legislation was racially motivated, that Representative Williams had told him that if Claiborne County had been better managers of their money, they would have not had their revenues taken from them.

Representative Capps, in debate of HCR 41, according to Representative Shepphard, stated that Claiborne County could not manage its money properly; and finally, Representative Shepphard testified that Representative Wells stated that in one of the meetings, that HR 602, which is one of the earlier bills, was one of the ways that "we can get that money in Claiborne County."

Representative Shepphard further pointed out that the black caucus of the Mississippi legislature did not see Grand Gulf as a race-related bill during the early stages of Grand Gulf committee hearings; but they later began to see it as a racial issue, and this was particularly true at the time that the bill was passed, and that the conclusion of the black caucus that the bill was racially motivated was based on the debate on the floor with apparent references to the mismanagement of money and the lack of responsive government in Claiborne County.

He also testified that he overheard remarks during the course of final debates, apparently to asides, no one whom he could identify as having said, but such remarks as "those niggers in Claiborne County"; but as I've indicated, he could not identify who made those remarks.

And finally, the plaintiff, in its efforts to show that this legislation was racially motivated in the Mississippi state legislature, produced Representative Isaiah Fredericks, who is a representative from Harrison County. He testified by deposition that he thought that the legislature was trying to take money from a black county. This apparently was based upon, at least in part, Representative Meridith's statement that Claiborne County was

not capable of managing its affairs, a remark that Representative Fredericks considered to be racist.

Now I turn to the defendants' witnesses that relate to the motivation for this legislation.

The defendants put on Wesley F. Busbee as an expert on the legislative history of HCR 41 and HB 388, particularly as to what motivated the legislature to pass this legislation. He concluded that the legislative history showed that money and how it was to be distributed was the motivating force and factor behind all votes that were taken on the bills and that race was not the motivating factor in the votes taken on these bills. Furthermore, he testified that in his opinion the results and effects of the bills would not be racial because he contended that the revenues would go to the poorest and blackest counties in Mississippi.

Representative Horace Meridith testified that his committee conducted many hearings over the years on the question of tax revenues from Grand Gulf; that one of the purposes of his committee was to determine what the needs of Claiborne County were, especially in view of the fact that it was a county that had gone from a 600 thousand dollar per annum budget before Grand Gulf to a multi-million-dollar budget since tax revenues on Grand Gulf had been collected. It was important to his committee to determine exactly what the needs of Claiborne County were in the light of its debt situation and in the light of its future needs and considering, in particular, that it had become accustomed to a considerably greater income than it had had before Grand Gulf. He said that at no time did his committee ever get a direct response from Claiborne County, even though they repeatedly requested that Claiborne County testify before his committee as to what their needs were.

This was later admitted by the supervisor from Claiborne County, Mr. Butler, who testified that no one from the Board of Supervisors would go to Jackon to testify officially before the legislature because it would have been political suicide to have done so. It was as if the person who testified was agreeing to the death warrant for these funds, and this he acknowledged that no response was ever made to any efforts of the legislature to get any official testimony regarding the needs of Claiborne County. They simply did not respond to any of the legislature's requests.

Representative Meridith admitted that he made a statement to the effect that "they don't have any government in Claiborne County," but he said that because he was frustrated because he could not get any information from the county on any occasion. He said his derogatory remarks about Claiborne County had absolutely nothing to do with race and that he told representatives of Claiborne County and citizens of Claiborne County that the issue was not black, it was not white, it was green.

He further explained that there were several reasons why all utility plants were not treated the same as Grand Gulf. First he said the Tax Commission had advised his committee that they could not figure out how it could be done. Additionally, and perhaps most important, was the political problem. If, according to Representative Meridith, you had 20 plants in the state that you were trying to bring within the purview of this constitutional amendment proposed by HCR 41, representatives of 20 counties would organize opposition and beat the entire plan. If you chose one or two counties that had the nuclear plants and the larger taxable structures, the political opposition in the legislature to depriving two counties of those revenues would be far less than if the revenues of 20 counties were going to be hurt.

He pointed out that Claiborne County was indeed not the only county that the legislature had considered for sharing of its tax revenues with the rest of the state. Tishomingo County had been designated for the construction of a nuclear facility by TVA, and the legislative efforts at one point involved both Tishomingo and Claiborne Counties, the only two counties that were locations for nuclear plants.

As far as Claiborne County is concerned, another motive of the legislature, according to Representative Meridith, was that there was a tax base of up to 25 million dollars in a small county. He testified that simply something needed to be done.

Jay Disharoon was the senator who represented Claiborne County and who fought for many years the legislation that was finally enacted. Senator Disharoon, who is white, testified that he fought the Grand Gulf bill for years and years and that he was always able to beat it down until the final law was passed; but in 1986, he said, there was a mood change in the legislature. Property taxes had gone up statewide as a result of reappraisal pursuant to the 1982 amendment to Section 112 of the Mississippi

Constitution, and it had to be re-amended in order to respond to the cry for tax relief. Others in the legislature in the service area of MP&L saw this as a means of reducing taxes in their counties—other legislators did.

Furthermore, Senator Disharoon noted that Claiborne County was not united in its opposition to the bill when it was in the legislature. The City of Port Gibson, for instance, which is the county seat of Claiborne County, was deriving no revenues from Grand Gulf; and it wanted some revenues, and it wanted the bills, HCR 41 and HB 388 to pass. Indeed, the mayor of Port Gibson, the county seat of Claiborne County, lobbied for the passage of the bills.

According to Senator Disharoon's testimony, the Yellow Creek Nuclear Plant in Tishomingo County came up two years before the bill came up with respect to Grand Gulf; and this particular bill relating to the Yellow Creek facility proposed taking money away from Tishomingo County that the county was to derive from taxing the Yellow Creek facility, and to build bridges with that money over the Tenn-Tom Waterway. The bill was passed and enacted into law, according to his testimony.

Next, Steve Wells, a former representative from Lincoln County, testified that although he was involved in offering substitutes for the bills that ultimately passed and was involved in various legislation and amendments with respect to the final legislation, no amendment or any other act on his part was motivated because Grand Gulf was located in a black majority county.

Charlie Williams, representative from Tate County and one of the floor managers of HCR 41, testified that HCR 41 resulted from fine tuning similar legislation over several years, including consideration of taxing all utilities and legislation taxing the Yellow Creek nuclear facility, as well as other amendments and considerations that never entered into any bill, and not into the final bill. He said that motivation for the bill was the tremendous inequity that existed with respect to the Grand Gulf facility because of the extremely high assessment; that is was fair to return money to local districts that were bearing the costs of Grand Gulf and that HCR 41 and HB 388 were the final bills after much consideration.

Furthermore, he said that the other MP&L plants were up to

20 to 25 years old and that MP&L had no plans to refurbish those plants. They, therefore, would be out of service; and this was one of the reasons that the focus turned on Grand Gulf, because Mississippi Power & Light would be getting most of its electricity and the ratepayers in the service area would be paying for most of their electricity from Grand Gulf.

Representative Williams further testified that the election was held in June to provide immediate relief to the homeowners that would benefit from the reclassification of the provisions of HCR 41. If the election had been postponed until November, according to his testimony, it would have been impossible to prepare and submit tax roles and make relief available to the taxpayers for the 1987 taxable year. He further noted that there was no objection by anyone in the legislature to the election being held in June instead of November. He further testified that Claiborne County had never given an accounting of where the 75 million dollars in tax revenues that they had collected from Grand Gulf in the past had been spent.

Senator C. R. Montgomery of Madison County. chairman of the Finance Committee of the Mississippi State Senate, stated that as far as he was concerned, the reason for the Grand Gulf legislation was to provide some relief for the ratepayers of MP&L in 45 counties. A second consideration in passing the legislation was to be fair to Claiborne County by providing them a significantly higher proportion of the revenue than any other county.

Senator Nevin Sledge from Bolivar County testified by deposition that the purpose for voting in June was to give homeowners relief for 1987.

Senator John Keaton of Grenada County testified by deposition that the reason he supported the legislation was because he felt like the ratepayers should benefit, and his three counties were in the service area of MP&L. The reason that Grand Gulf was singled out and other utility planys excluded was because Grand Gulf produced so much more money than the others and because of the political opposition in the counties where the other utilities are located.

Senator Robert G. Huggins testified by way of deposition that the difference between Grand Gulf and other generating plants was the enormous amount of money involved.

Representative Terrell Stubbs of Simpson County testified that it took some 11 years to convince the people in the legislature to redistribute the tax dollars provided by Grand Gulf, and it was done because it was simply not fair to the other rate-paying counties to have Claiborne County the beneficiary of all the tax dollars. He testified that race had nothing to do with the passage of the legislation. He noted that two black members of the Ways and Means Committee were actually the authors or at least two or the authors of the Grand Gulf legislation that is HCR 41. There was later testimony that indicated that each committee member's name was put on the legislation and that if anybody wanted his name taken off, he would ask for his name to be taken off; and no one stood up to have his name taken off this legislation.

He further testified to efforts to assure that Claiborne County would not be left with the same tax base that it had before Grand Gulf was constructed. He said the legislators took into account the fact that Grand Gulf had been providing additional revenues and that Claiborne County had become somewhat accustomed to a higher tax base than it had had earlier.

So that is the evidence that was presented, both by the plaintiffs and the defendants. You can obviously tell from the tone of the testimony of the respective parties that the plaintiffs introduced evidence that tended to show that the Mississippi legislature was motivated by race when they enacted Grand Gulf, and the defendants put on evidence that it was economically motivated.

So what is our conclusion from this evidence that I have noted and from other evidence that we heard and from the witnesses that we observed?

One, it is clear to us that Claiborne County did not cooperate with the legislature in conducting the hearings on Grand Gulf, for whatever reasons. We're not faulting Claiborne County for that. But it is clear that the legislature made attempt after attempt after attempt to get somebody from Claiborne County government to testify in behalf of Claiborne County as to what their needs were and how their needs could be provided for in the event of the redistribution of the tax dollars from Grand Gulf, and they heard nothing from Claiborne County. According to the testimony, no one was willing to speak for Claiborne County.

Thus, as far as the primary evidence the plaintiffs introduced to show that the legislation was racially motivated—that is, the

comments that there was no government in Claiborne County, that their funds were mismanaged, we find has a factual basis unrelated to race. There was evidence that the funds that Claiborne County was misspending some of their money, and there was no evidence that was introduced by Claiborne County that would refute the inferences that we could draw from that evidence.

Thus, it seems to us that the remarks that Representative Meridith made and that other representatives are alleged to have made about the mismannagement had a reasonable factual basis and was prompted by frustration in dealing with Claiborne County, which refused to deal with the legislature.

Now, as far as Representative Shepphard is concerned, we feel that he was a truthful witness. We do not doubt his testimony that he overheard some persons during the course of the debate refer to "those niggers in Claiborne County"; but he could not identify any person who made those remarks, and it is the finding of the three judges that there is no evidence that those remarks were pervasive.

The evidence is overwhelming that the motivation of the legislature for a number of years was economic. We find that the economic reasons are fully supported in the testimony that you have heard. It is clear that there were valid economic reasons and motivations for the legislation.

Grand Gulf indeed is the only nuclear plant in the state of Mississippi. It is the only plant that produces the kind of income from its tax revenues in the state of Mississippi. The political and practical problems for not including other utilities constituted a reasonable explanation, as far as this court is concerned, as to why other utilities were not included. They obviously were much smaller. They obviously would not produce the tax revenues. They obviously were not as controversial as the rate burden that Grand Gulf was imposing, and they were obviously old plants that were being phased out, at least in part.

Furthermore, it is clear to us that Claiborne County was not necessarily singled out simply because it was Claiborne County or simply because it had a black government or any similar reason at all, because we find that Yellow Creek in Tishomingo County was also the subject of similar legislation; and we can take judicial notice of the fact that Tishomingo County is a predominately

white county.

Finally, we are convinced that there was a totally rational basis to conclude that it was fair to the other 44 counties in Mississippi Power & Light's service district to allow them to share in some of the tax revenues from the structure and property that they themselves were supporting.

With respect to HCR 41 and the property classifications that are alleged to have a racial impact against blacks, we find first that there was no racial motivation for reclassification. Indeed, I don't think that the plaintiffs have contended that. Certainly there has been no evidence that was adduced that related to racial motivation behind reclassification of the property. We find that there was a rational basis for the reclassification because of the political pressure of the residential homeowners who seemed to have been pounding on the legislators' doors. Certainly we find that the law is neutral on its face; and as far as its impact is concerned, we find that debatable at best.

In any event, in order for us to find that this legislation was unconstitutional, we must find that it was purposefully discriminatory and that there was an intent to discriminate, either in the terms of the bill or in the motivation for enactment of the bill; and neither can we find.

With respect to the election date and whether it violates the Fifteenth Amendment of the Constitution in denying access of voters, we find that there was no—and this is quite apart, now, from the Voting Rights conclusions that we later draw; but as far as violating the Contitution, the election date in June instead of November did not deny equal access of the polls within the constitutional sense to black persons. The evidence showed, depending upon whose statistics we accepted, that the black turnout was exactly equal to the white turnout in the June election or that it was a third greater than the white turnout.

And finally, with respect to setting the election date, we find that there was no intentional discrimination on the part of the legislature to discriminate against black people by setting the election in June; indeed, there was a rational basis for a June election; and as a matter of constitutional law, if we cannot find intent to discriminate in setting that date, then there are no constitutional violations or implications.

Thus, with respect to all of the constitutional issues that are

raised, we conclude and we find that there was no racial motivation with respect to the enactment of any of the legislation; we find that there was no intentional discrimination with respect to any of the legislation; we do not find that there is conclusive evidence with respect to the impact of the legislation; and finally, as a matter of law, and on an alternative ground, we find that the constitutional claims are barred by the tax anti-injunction statute.

The Tax Injunction Act reads as follows: "The district courts—" and that's what we are sitting as, a district court "—shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state."

The United States Court of Appeals for the Fifth Circuit has held that the Tax Injunction Act bars any actions that are brought pursuant to 42 U.S.C. 1983, under which the constitutional claims in this case have been brought, and that it applies to the general administration of a taxing scheme of a state; and we find that the Tax Injunction Act is specifically broad enough to cover the particular act in question here and that notwithstanding the other grounds that we have decided the constitutional issues on, that the Tax Injunction Act bars this court rendering any relief with respect to the constitutional issues. The cases we rely on are *Bland v. McHann*, 463 F.2d 21 (5th Cir. 1972) and *United Gas Pipe Line Co. v Whitman*, 595 F.2d 323 (5th Cir. 1979).

Just in the event that the record is not clear—As I've indicated, I'm just talking from some notes here, and I may or may not have omitted this; but in the event that I did, this court makes a specific finding with respect to the setting of the June 3rd election date that it served a valid and rational legislative purpose—that is, to allow the taxpayers of Mississippi to receive the benefit of any tax reduction that resulted from that Act in the 1987 year and not have the taxpayers to wait an additional year in order to receive the tax benefits. We specifically find that there is no evidence that the setting of the date of the election was racially motivated; and with respect to HCR 41 and HB 388, we specifically find that its enactment was motivated by economic considerations and not by racial considerations.

We turn now to what we really consider to be the crux of this

case, and that is the alleged violation of Section 2 of the Voting Rights Act.

Section 2 of the Voting Rights Act provides that no voting qualification, or prerequisite to voting, or standard, practice or procedure shall be imposed or applied by any state, which results in the denial or abridgement of the right of any citizen of the United States to vote on account of race. Subsection b of this statute goes on to provide that a violation is established if it is shown that the political processes leading to an election are not equally open to participation by members of a class of citizens protected by this statute in that its members have less opportunity tha other members of the electorate to participate in the political process and to elect representatives of their choice.

Now, the way we understand the plaintiff's theory that Section 2 of the Voting Rights Act was violated by holding the election in June instead of November is this: Holding the election in June instead of November was a voting procedure applied by the State that shortened the campaign period, constituting an abridegement of black persons' right to vote because it denied them equal access to information and hence denied black persons the right to cast an informed vote on the same basis as other members of the electorate.

This theory is the plaintiffs' basis for the Section 2 aspect of this lawsuit and is supported by the allegations that black persons are less educated, are less politically sophisticated and enjoy substantially less means and methods of communicating with its constituency than do whites. These deficiencies are alleged to have resulted from years of discrimination in education and voting.

In determining whether these plaintiffs have proved a violation of Section 2, we have three considerations before us today. The first is whether these plaintiffs have standing. The second is whether the theory propounded by the plaintiffs in this case is a cognizable cause of action under Section 2. And finally the question we have before us today is whether the theory is supported by the evidence in this case.

It is, of course, fundamental that in order for anybody to bring a lawsuit in a Federal district court, they must have standing within the meaning of Article III of the Constitution of the United States. There must be an actual case or controversy. We are not here to litigate just simply because someone has a question that

they may think is interesting or a grievance that they want to litigate or a question that they may be tangentially involved in. We are here to litigate actual cases or controversies, and that's all we can litigate by virtue of the Constitution of the United States. The Constitution does not permit us to entertain any kind of case that does not fall within the provisions of the case or controversy requirements of Article III of the Constitution.

In determining whether we have that standing today and whether these plaintiffs here can litigate the question that they are attempting to litigate, we first have to determine what standard we are going to apply. First, as I've indicated, the plaintiffs must meet the bare minimum standard. Now, if they meet the bare minimum standard, that does not automatically mean that they have standing to pursue this particular litigation, because even if we decide that there are basic constitutional requirements for standing, we then have to determine whether, as a matter of prudential concern, this is the place to litigate the kind of issues that are being raised by the parties.

Obviously the plaintiffs here fare a lot better if we apply just the bare minimum requirements, and that is exactly what we have determined is applicable in this case. Here a voting right is concerned; and when a voting right is concerned, we are bound, we think, by the U.S. Court of Appeals for the Fifth Circuit in *O'Hair v. White*, 675 F.2d 680 (5th Cir. 1982) (en banc), that held that "we do not believe that prudential notions of self restraint in the area of standing are properly invoked in cases involving dilution of an individual's fundamental voting rights." We translate that holding to this case as meaning that because voting rights under Federal statutes are alleged here, this controversy is the businsess of this court; a voting rights case is the kind of case that is most appropriate to be litigated in this court, and we only require the plaintiffs to make a minimum showing.

So what do they have to show here in order to meet that standing? First they've got to show that an actual injury occurred to them, to these individual plaintiffs. First they've got to show that that injury can be fairly traced to the challenged action; and finally, they've got to show that the injury they complain of is likely to be redressed by a favorable decision of this court.

I say at the outset that our analysis of the facts that are alleged

in this case with that law indicate that this is a very, very close question. We have grave doubts about standing one way or the other.

First, we look at the Complaint; and here, facts that would support standing for the plaintiffs are not alleged. For instance, it is clear here that the claim that they are making is that black citizens were denied equal access to information and therefore did not fully participate in the electoral process. Not a single one of the plaintiffs here allege that that injury occurred to them. Not a single one of the plaintiffs say that they were denied access or that they did not cast a fully informed vote. They are in effect seeking, in that respect, to advance rights of third parties and not breaches of their own rights. So the Complaint itself does not allege those facts from which we can determine whether the plaintiffs have alleged an injury under Section 2 of the Voting Rights Act that entitles them to bring this lawsuit.

We also know that it is not appropriate to determine standing on the basis of a fully litigated case to see whether the plaintiffs prevail or don't prevail. So we have looked to allegations of facts that were adduced primarily in some depositions and affidavits that were filed in connection with earlier pretrial motions for summary judgment and other related motions and motions to strike, and that sort of thing, to determine whether the plaintiffs have successfully alleged an injury sufficient to entitle them to bring this lawsuit under Article III of the Constitution

The way we understand the plaintiffs' contentions in this regard is they've suffered two injuries. First, they say that we have suffered a real injury by virtue of saying that we are citizens of Claiborne County, we are taxpaying citizens of Claiborne County, business owners in Claiborne County, homeowners in Claiborne County. As a result of the action that we complain of—that is, black persons being denied full information because of the shortened campaign period—because that occurred, we have lost a significant part of our tax base in this county, and that is a real injury; and that, to us, seems to be a real injury.

The second injury that the plaintiffs allege or seem to allege is that they were injured because they did not have an adequate opportunity to present their point of view to their constituency and the people that would have been sympathetic to them because of the shortened campaign period; and that argument is an injury,

though obviously a bit more tenuous.

But the next consideration that we have: Is the injury of economic harm fairly traceable to the challenged conduct, that is, to the fact that the campaign period was short? Well, that is less sure than the injury in fact; but they contend: We lost the election because the short campaign precluded us from effectively reaching our voters; the lost election is the cause of economic harm. Though the relation between the injury and the challenged conduct is uncertain, we will give the plaintiffs the benefit of our doubt.

But then we get to the question of whether this court can redress the injury that they complain of; and clearly, we cannot redress the injury that they complain of; losing the election, and the loss of tax base in Claiborne County. The only thing that this court can do is to order a new election to give them ample time to campaign. So as far as the injury of economic harm is concerned, it would seems to us rather clear that they don't have standing, because we cannot change the results of the election for them. We can simply give them another new election, and whether they might win is far too speculative under the case law to constitute a basis for redressing this particular injury.

Now let us turn to the second injury that is implicitly, if not explicitly alleged, that is, the denial of the opportunity to effectively communicate with black voters. We have trouble finding the injury sufficient to support standing. It is certainly not an injury of a right protected by Section 2 of the Voting Rights Act which is a guarantee of the rights of voters; it does not guarantee the rights of those seeking to reach voters, except indirectly. Furthermore, the plaintiffs have hardly alleged any facts to support their conclusory language of injury, that is the denial of an opportunity to communicate with black voters.

Nevertheless, assuming the injury in fact, it is plausibly alleged to be fairly traceable to the challenged conduct, that is, the shortened campaign period. And finally, we could, of course, redress the injury of lack of opportunity to effectively communicate with the black constituency, because we can set aside the election and order a new election that would give you an ample period of time in which to campaign.

So you can see that either one of these bases for standing, whenever it's analyzed in terms of the injury itself, whether it

is fairly traceable to the challenged conduct and whether we're able to address it, is awfully thin; and we have, as I've earlier indicated, grave doubts and reservations about whether the plaintiffs have standing; and it could be very likely, if this case is appealed by either party, that it would be reversed on that basis, that is, that the plaintiffs don't have standing, because we do today hold that the plaintiffs have standing; and we do so because when we consider the totality of all the facts and arguments, we think that we have alleged before us an actual controversy. We are not talking about, as has been said, some rarifed argument in some debating society. We're talking about facts, certainly allegations of facts, that occurred that injured people; and even though the relationship between those facts and the challenged conduct and our ability to remedy the injury may be tenuous, there seems to be no questions that whenever we consider the totality of the circumstances, we have got an actual controversy in this court and that we may be able to provide relief.

Thus, holding that the plaintiffs have standing in this case, we approach the next question; and that is whether the theory that they advance is cognizable—that is, does the Voting Rights Act recognize as a violation of its provisions the denial of equal access to information.

The position of this court is that while there is no guarantee under the Voting Rights Act to any voter that he has the right to cast an informed vote, it can be a violation of Section 2, given the appropriate circumstances, for the State to apply a procedure that has the effect of precluding an informed vote by black voters when that procedure does not have the same effect on other voters of the electorate.

Thus, the final question that is presented here today is this: Does the evidence demonstrate that the shortened election period resulted in the denial to black voters an informed vote on HCR 41 equal to other members of the electorate?

Let's turn now and review the evidence as relates to the Section 2 violations.

The plaintiffs' witnesses included Allen J. Lichtman, who was offered as an expert in ecological regression; and he testified, as a matter of fact, that more blacks voted for HCR 41 than did whites. He testified that the statistical analysis, however, supports the conclusion that there was a lack of black informed vote when

compared to the white vote. This conclusion is based on the fact that the blacks in MP&L's service area did not support to any greater extent HCR 41 than did blacks in other parts of the state. The whites, however, in MP&L's service area voted for HCR 41 in greater percentages than whites outside the MP&L service area, which obviously means that white people tended to vote their interests more than the black people voted their interests in the MP&L service care and as regards the vote statewide. He concluded that one of the reasons that blacks voted a less informed or a less self interest was bacause of the insufficient time to be informed.

We next turn to the testimony of Albert Butler, who is the supervisor from District One of Claiborne County. He testified that he learned in April that HCR 41 and House Bill 388 had passed and he knew that an election would occur in June. He testified that there was a great deal of confusion among the Claiborne County Board of Supervisors as to what to do. They finally hired a law firm to try to "keep the vote from going on the June ballot." This occurred in May.

He testified that he went to the local NAACP in Claiborne County but ran into difficulty in trying to convince them to oppose HCR 41. He said that he didn't know how to get the point over to them to convince them to vote against te bill that would divide the revenues of Grand Gulf, even when he was talking to the citizens of Claiborne County, who would be harmed most by this legislation and this constitutional amendment. He said that he went to local black ministers, who said that they would help him as best they could; but they "did not understand." He further testified as to the disastrous consequences that would occur to Claiborne County as a result of reducing the 13.5 million to eight million for the next few years and then to less than that later on.

Supervisor Butler testified that he knew Grand Gulf was a topic in the legislature ever since he had been on the Board of Supervisors—that is, January 1984; and he knew that the county had hired Mr. Mason and Mr. Levanway to lobby on the subject. A committee called Concerned Citizens for Fair Taxation has been formed in Claiborne County, and the supervisors were members of the board. Concerned Citizens was the employer of Mr. Shelby and Mr. Levanway, who had been hired in February

of 1985.

In February of 1986 the board hired another attorney to try to find a legal argument to try to block the election that they knew would be coming up soon. He admitted that the Board collectively did nothing to campaign against this constitutional amendment. Individually, he said, "we did a little something."

Supervisor Butler agreed that he had time to call supervisors all over this state but that he only talked to Bennie Thompson and Robert Walker and Mr. Brooks of Lowndes County. He testified that he did not follow up with any of these supervisors. He said that the problem that he had was on the local level, meaning in Claiborne County; that people were mad at him for what he was doing and some were spreading it on him that he was against something that would help the local people. These quotes come from my notes of Mr. Butler's testimony: "We were not unified locally." "We could not ask others to help us when we had a problem at home." "Claiborne County knew it didn't want its money divided. We couldn't agree on how to oppose it, though."

He further testified that he personally was controversial at the time because he was opposing the bond issue and that half of the community was against him. This stymied his effectiveness and his ability in the local community and his willingness to campaign against HCR 41. He said that with respect to HCR 41, there was little he could say.

Supervisor Butler testified that the Board of Supervisors had reconsiled itself to the fact that it could not win the fight, that the time had come when they were going to take the ad valorem taxes and that the Board could not stop it. The Board, therefore, according to a member of the Board of Supervisors, concluded that it was best to fight it out in court because we could not win the election; and therefore, no campaign of any kind, in the media, personal or otherwise, was undertaken to defeat HCR 41. And, of course, Mr. Butler is the witness who testified, as I've earlier indicated, that no one ever showed up at the legislature because to have gone there and testified would have been political death; so no one went when they were summoned, and no one responded to the summons.

He further testified in connection with the campaign period that he found many blacks in other counties who wanted the

benefit that their county would receive from the tax revenues of Grand Gulf. He reported that other black citizens in other counties told him in connection with this election, "We need some money in our county too. It's wrong to take your money, but we need the money ourselves."

This witness concluded by saying that "if we could have mounted the right type of campaign, we could have won, maybe; but we had to be unified to do it, and we simply weren't unified."

Leroy Brooks testified by deposition that if Claiborne County had asked him to oppose the amendment because it was unfair to them, he probably would have done so; but Mr. Brooks, who apparently is a leader among the black supervisors in the Mississippi Supervisors Association, testified that he was never asked by anybody in Claiborne County, on the Board of Supervisors or anybody else, to help or assist them in opposing HCR 41.

Leroy Brooks, the supervisor, testified, as a matter of fact, that he couldn't even remember how he had voted on the bill, because his primary interest was the ethics resolution, the conflict of interest amendment, and that as far as Grand Gulf was concerned, it was an isolated situation to him. He also testified that no one ever contacted him in connection with the black asociation of supervisors, and it was never discussed, but that he could have called a meeting before the June election if they had wanted to, but nobody ever asked him to call a meeting.

Next we consider the testimony of Dr. Leslie McLemore. He testified that blacks have less effective organizations to communicate with voters than are generally found in the establishment or in the white community. He testified that the black campaign is more on a person-to-person basis—that is, church, civic organizations and so on. He testified that black campaigns are grossly underfunded. He further testified that black churches are generally the focus of and the foundation of a campaign and that sororities and fraternities, voter leagues and the NAACP also constitute part of the black political network. In the white community, counter to those means of communication, he noted that the white organizations included such organizations as Farm Bureau, Mississippi Economic Council, Mississippi Manufacturers Association and so on, and the blacks did not have any sort of comparable organizations as

those.

He testified to the limited experience that blacks have on constitutional referenda. His expert opinion was that the June election limited the time for blacks to be informed because the mechanics are not in place for a statewide network of communications. Furthermore, he testified that it takes longer to intelligently inform black voters because of the lack of this network.

On cross-examination Dr. McLemore stated that he never been contacted for help or assistance in the election to oppose HCR 41.

Ray McGrath was called as a witness. He's an employee in the Ad Valorem Division of the State Tax Commission, and he testified to the effect that the bill was complicated and confusing, with inconsistent interpretations as to provisions. His testimony, however, related primarily to the property classification provisions of the bill.

Finally, Stone Barefield, attorney for the Board of Supervisors in Forrest County, testified as to the confusion and contradictory effect of the bill, testifying that in his county it had had the opposite effect that was intended—that is, that taxes on most private residences were actually raised instead of lowered. He did testify, however, that the legislature did not knowingly do what they did.

The defendants' testimony on Section 2, as far as I was able to categorize the witnesses' testimony, was limited simply to one witness, Dr. Harold Stanley; and he was presented as the State's expert on ecological regression analysis. He testified that his analysis showed that there was not a tight relationship with respect to race concerning HCR 41. His analysis also showed greater differences in the white vote than in the black vote when comparing the vote outside MP&L's service area, suggesting that whites voted their self interest slightly greater than did blacks. He could draw no conclusions from the statistics, however. He concluded, in his expert opinion, that he could not tell why blacks voted the way they did and his testimony cast doubt upon the calculations, projections and expert opinion of the plaintiffs' expert witness on ecological regression that the evidence showed that the black vote was less informed than the white vote.

According to his testimony, in November about 40 percent of the blacks turned out and about 26 percent of the whites turned

out. In other words, considerably more blacks turned out than whites, according to his analysis. And in June, according to his figures, though he testified within ranges, approximately 11 percent of the whites turned out and 19 percent of the blacks turned out in the June election.

I turn now to the analysis that the three-judge court places on the evidence that you've just heard in the light of the applicable law.

With respect to the expert statisticians, we, of course, were impressed by both of these gentlemen. They testified with confidence; they testified and demonstrated an in-depth knowledge of their field; and they looked at, to a large extent, the same data, though the State's witness data was slightly more complete.

In any event, as far as this three-judge court was concerned, it was a standoff. We simply respected the testimony of each but did not feel that one witness's testimony carried a greater preponderance of convincing weight than the other. Thus, for the purpose of our analysis, we look to the other witnesses.

First, this court does not accept the conclusion that the black network of political communication is ineffective or that the ability to understand issues or the inability to understand issues exists in any greater degree with blacks than with whites as a class. We recognize that blacks as a class have lower education levels. We recognize that as a class blacks have less sophistication in politics because they have been excluded from politics throughout the history of this state until recently—with the exception of the period of Reconstruction until 1890 or so. But we do not accept that blacks as a class are less intelligent; and that, apparently, is what some of the experts were suggesting. We do not accept that blacks are less intelligent as a class than whites; and to the extent the experts were saying that is part of the reason it takes longer to educate a black voter than a white voter, we don't accept it.

We do accept that blacks as a class are underfunded and that this is a barrier to one means of communication, that of media; but in this campaign we observed there was no evidence of any media campaign and no evidence of any efforts on the part of the blacks or the whites to wage any extensive media campaign where funds would have been a primary consideration.

We do note that in this case, in this particular case, that the black plaintiffs were not an underfunded class, as blacks often are in elections, because the plaintiffs in this case had access to millions of dollars in tax money. Even though there were obviously other obligations for the tax dollars, there was money that could be reached to even engage in a media campaign if it had sought to do so. It chose to spend the money on lawyers instead, perhaps a wiser investment.

The evidence in this case shows that if blacks were denied access to information, it is because the plaintiffs and their group did not offer the information. There was no effort on the part of the plaintiffs in this case to communicate with their black constituency, if the blacks in the state were their constituency.

Dr. McLemore, a recognized political expert in black politics in Mississisppi and someone who could have given wise advice and counsel, was never contacted. Supervisor Brooks, a leader among the black supervisors who could have martialed his fellow black supervisors in various parts of the state, was never contacted. There was no evidence of any followup with Bennie Thompson and Robert Walker.

The supervisors in Claiborne County made a deliberate choice not to campaign. They testified to that. That's exactly what Mr. Butler testified from the witness stand. He noted that there was division in the ranks. Nobody knew exactly how they wanted to approach the campaign. He stated that the supervisors, in effect, recognized their fate; that the time had come and the reckoning day had come that the State was going to take away the tax base of Grand Gulf; and, according to his own testimony, "we decided there was nothing we could do about it."

Indeed, the testimony from this witness stand was that their fellow black citizens in other counties told them, whenever they did make some effort to campaign, "We don't think it's fair for the money to be taken away from you, but we need the money." So what little effort was made to campaign met with little success.

We're not faulting the Board of Supervisors of Claiborne County for their decision not to campaign. They recognized that a campaign under these circumstances was not going to make any impression on people because people were going to vote their self interest. That was the word that had come back to them.

And finally, the fact that there was no evidence of denial of

opportunity to inform black voters, except such as was self-imposed, is demonstrated by the testimony that a deliberate decision had been made not to campaign and that the deliberate decision had been made to litigate rather than campaign.

Next, in considering the contentions of the plaintiffs, plaintiffs contending that they have been harmed because the black voters were denied access to information by the shortened campaign period, we note that the plaintiffs had known for several years that they had a problem. They had known for several years that the legislature had plans to take away the tax structure of Grand Gulf and to share those revenues with the rest of the service area. Yet, the evidence shows little or no effort to educate any voters, black or white. Furthermore, the evidence showed here that the plaintiffs in this case specifically knew when an election was going to occur two months before it occurred, yet no campaign plans were ever made.

With respect to the contention that if the election had been held in November instead of June they would have had a greater period of time to campaign and to communicate their point of view and to make other blacks in Mississippi understand how they felt, we find that that is totally speculative in view of the absence of any efforts that were made in the campaign period. There is no evidence presented to us that there would have been any campaign that would have been waged by the plaintiffs in this case if the campaign had even been longer; and thus holding the election in June instead of November did not, as a matter of fact, deny any black voters access to information.

With respect to the contention of the plaintiffs that the annual supervisors' meeting occurred in July and, if the election had been in could have gone back to their respective counties and explained Claiborne County's point of view to the black citizens of other counties, we find that such a conclusion is only conjecture because we have the testimony of supervisor Brooks who said that he could have called a black supervisors' meeting, that he would have tried to help his fellow supervisors in Claiborne County if they had asked for his help. There was no request for help. Indeed, Supervisor Butler testified that he ran into Brooks at Jackson State at a meeting at a group where black supervisors were and that he talked with Brooks at some length and never mentioned the campaign against HCR 41.

Thus, with respect to the contention that a longer campaign period would have provided black voters greater access to information, there is no evidence before us that this is so. The evidence before us is to the contrary, and any argument that it would have occurred is speculative.

Finally, with respect to the contention of the plaintiffs that black voters were denied equal access to information because HCR 41 had the opposite effect of what it was represented to achieve—that is, the people were told that it would reduce taxes for residences, when in fact in some instances, and especially with poorer persons or people with less valuable houses, it actually raised taxes—we find that as far as that is concerned, that any misrepresentation, if it occurred, was unintentional as far as the legislature is concerned; and we also note that the information went to both black and white constituencies; and even though it may have been misinformation, it was not denial of equal access to blacks. If it was denial of equal access, which we do not pass on, it was denial of accurate information to all voters, not simply black voters.

And finally, we are convinced that there was no denial of equal access to the political process in this case, because the evidence indicates that the black voter turnout was equal to if not greater than the white turnout in the June election.

So this three-judge court holds that the evidence does not support the conclusion that the shortened election had the effect of denying access of information to black voters so that blacks as a class cast a less informed vote in the political process than did other members of the electorate.

In conclusion we would make some general observations, just the observation of three judges who heard all the testimony in this case, who have plowed through tons, it seems like, of paper, who have studied depositions, and who have conferred on several occas ons among ourselves. Our conclusion about this case was probably summed up best by Mr. Meridith when he testified that he told Mr. Evan Doss, the Tax Assessor for Claiborne County, that "the issue is not black; it's not white; it's green." That is the way it appears to this court: that here we don't have persons acting because of black skins, or persons acting because of white skins; we have persons acting because of human qualities common to all. That is, that Grand Gulf was located perchance in

Claiborne County, although it was being paid for by the citizens in 44 other counties. It wound up costing the utility users in all 45 counties many, many dollars, wound up costing in the billions of dollars to construct, a burden that was going to have to be shared by citizens in 45 counties. Those 44 counties looked around and saw that one county was getting all of the benefit for the burden that 44 more counties were bearing. And as I say, a human quality emerged: They wanted the benefit if they were going to bear the burden, and they looked at Claiborne County, which was solely enjoying the benefit; and when they looked to Claiborne County, they thought it was a matter of fairness that Claiborne County should share Grand Gulf's tax dollars with the people that were bearing the burden of the cost. They put pressure on the legislators to do something about it, to relieve their taxes and to get some of that tax money for their counties; and the legislators went into action.

Claiborne County is a county of about 12,000 souls; and unfortunately, it neither has the political clout nor, in this case, the equity of argument to overcome the demands of the rest of the counties. The Board of Supervisors were exactly right in this case. They saw it coming; and they acknowledged that they couldn't stop it, even if they did campaign. They recognized that the day or reckoning had come when Claiborne County was going to have to share its revenues from Grand Gulf. And from we three judges, our observation is that, under the same circumstances, it would have happened to any county and certainly to any small county who could not force the legislature as a matter of clout or who could not cajole the voters as a matter of equity.

A judgment will be entered in accordance with this opinion. Court is adjourned.

CERTIFICATE

I, CAROL R. WINSTEAD, Official Court Reporter for the United States District Court, Southern District of Mississippi, hereby certify that this is a true and correct transcript of the Opinion rendered in this action, such transcript having been prepared to the best of my skill and ability.

I further certify that the page format used and the transcript

fees charged are in accordance with rules of the Judicial Conference of the United States and this court.

This the 22nd day of December, 1986.

Carol R. Winstead

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Jackson Division

—

CIVIL ACTION NO. J86-0373(L)

—

EDDIE BURRELL, ET AL.
PLAINTIFF

v.

—

WILLIAM A. ALLAIN, ET AL.
DEFENDANTS.

—

JUDGMENT

In accordance with the Opinion of the Court rendered on December 18, 1986, Judgment is hereby entered in favor of all defendants and against plaintiffs, and this cause is finally dismissed with prejudice.

Costs of this action are taxed against plaintiffs.

SO ORDERED, this the 31st day of December 1986.

E. Grady Jolly, Jr.
UNITED STATES
CIRCUIT JUDGE

Tom S. Lee
UNITED STATES
DISTRICT JUDGE

Henry T. Wingate
UNITED STATES
DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. J86-0373(L)

Eddie Burrell, et al.,
Plaintiffs,

v.

William A. Allain, et al.
Defendants.

ORDER

This cause is before the court on the plaintiffs' motion under Rule 59(e), Federal Rules of Civil Procedure, to amend the judgment entered by this court on December 31, 1986. After consideration of the plaintiffs' motion, the motion is granted to the extent herein noted.

The plaintiffs have moved this court to amend its judgment of December 31, 1986, to provide that the federal constitutional claims raised in this proceeding are dismissed for lack of jurisdiction because the provisions of the Tax Anti Injunction Act, 28 U.S.C. § 1341, bar these claims, rather than, as the judgment presently does, dismiss on the merits with prejudice. In its opinion delivered from the bench on December 18, 1986, this court ruled that concerning all federal constitutional issues, it found no racial motivation with respect to the enactment of any of the legislation, that if found there was no intentional racial or other impermissible discrimination with respect to the legislation, and that it found no conclusive evidence that the legislation impacted upon one race more than on another. The court then stated, as an alternative ground, that the constitutional claims were barred by the Tax Anti Injunction Act.

The court now acknowledges that the proper ruling, and the one that it now adopts, is that the federal constitutional claims raised in the pleadings in this case are barred by the Tax Anti Injunction Act and are therefore dismised for lack of jurisdiction. We should have ruled, and do now rule, alternatively, that in

the event any reviewing court should disagree with our holding that we lack jurisdiction of the federal constitutional claims, we specifically find as a fact, after briefing and litigation of the issues, and full and complete consideration of the constitutional claims raised by the plaintiffs, that the state legislation attacked by the plaintiffs in these proceedings was not motivated by constitutionally impermissible reasons, but rather was motivated by legitimate economic and political considerations; alternatively, the dismissal of the federal constitutional claims rests on a determination of the merits.

We shall also alter our judgment, pursuant to the plaintiffs' motion, to preserve the movants' right to later seek fees and expenses under Rule 37(c), Federal Rules of Civil Procedure.

The plaintiffs' motion to alter or amend the judgment is therefore granted to the extent noted herein. The final judgment will be amended accordingly, and reentered pursuant to this order.

SO ORDERED this the 15th day of January 1987.

E. Grady Jolly, Jr.
UNITED STATES
CIRCUIT JUDGE

Tom S. Lee
UNITED STATES
DISTRICT JUDGE

Henry T. Wingate
UNITED STATES
DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
Jackson Division

Civil Action No. J86-0373(L)

Eddie Burrell, et al.,
Plaintiffs,

v.

William A. Allain, et al.,
Defendants.

Judgment

In accordance with the opinion of the court rendered on December 18, 1986, and further in accordance with the reasons given in this court's order of today, January 15th, 1987, which is in response to the plaintiffs' motion filed pursuant to Rule 59(e), Federal Rules of Civil Procedure, judgment is hereby enetered in favor of all defendants and against the plaintiffs. This cause is finally dismissed with prejudice except with respect to the federal constitutional claims set forth in Counts XV and XVI of the Fourth Amended Complaint which are dismissed for want of jurisdiction as barred by the Tax Anti Injunction Act, 28 U.S.C. § 1341. Motions under Rule 37(c), Federal Rules of Civil Procedure, if any, shall be filed within the time period provided for claims for costs under Local Rule 15.

The costs of this action are taxed against the plaintiffs.
SO ORDERED, this the 15th day of January 1987.

E. Grady Jolly, Jr.
UNITED STATES
CIRCUIT JUDGE

Tom S. Lee

UNITED STATES
DISTRICT JUDGE

Henry T. Wingate

UNITED STATES
DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
Jackson Division

Civil Action No. J86-0373(L)

Eddie Burrell, Albert Butler, John D. Eggleston, Charles Johnson, Kenneth Vaughn, Individually and in Claiborne County Board of Supervisors, Willie Buck, Sr., Stella H. Jennings, Gerald B. Mitchell, Jr., and William Moulder

v.

William A. Allain, Governor of Mississippi, Edwin Lloyd Pittman, Attorney General of Mississippi, Dick Molpus, Secretary of State of Mississippi, in their official capacities and as members of the Mississippi State Board of Election Commissioners, Mississippi State Board of Election Commissioners, and the State of Mississippi

(Three Judge Court)

The Honorable E. Grady Jolly
The Honorable Tom S. Lee
The Honorable Henry T. Wingate

Date: May 30, 1986
Place: Jackson, Mississippi

THE COURT: We are aware that the state as well as the plaintiffs in this case need a speedy decision and it has been a speedy decision. It may not be the most thorough decision, but we will at least give you the reasons for our ruling.

Now the change that's at issue in this case revolves around the legislation enacted by the Mississippi State Legislature on April the 2nd, 1986, House Concurrent Resolution No. 41 proposing to amend Section 112 of the Mississippi Constitution by changing

many aspects of the tax structure of the state. House Concurrent Resolution No. 41 specifically directs the Secretary of State to submit the proposed amendment to the electorate in an enection to be conducted on the first Tuesday after the first Monday June, 1986. That is June the 3rd, 1986.

Now we will assume for the purposes of our opinion that the Attorney General is correct in its contention that the applicable statute is Section 23-5-171 as far as the statute pursuant to which elections are set dealing with constitutional amendments. Nevertheless, we believe that the proposed or objected to change in this case is subject to preclearance. We base that decision on the facts before us and on the law by which we are controlled.

The facts before us indicate that since the passage of the Civil Rights Act there have been 30 elections that have dealt with constitutional amendments and of those 30 elections approximately six were conducted on dates other than November. Since 1970 there has been no election on a constitutional amendment that has been conducted on any date other than the November date, and there have been 21 such elections conducted in November. It is clear from that evidence that a pattern and practice exists of conducting elections with respect to constitutional amendments in November.

Section 5 of the Voting Rights Act does not apply only to changes in statutes, but applies to changes in practice as well. Clearly where since 1970, 21 elections have been conducted in November and in 1986 for the first time since 1970 in the 22nd election the date is changed, we consider that to be a change in an existing practice that subjects the setting of that date to the requirements of Section 5 of the Voting Rights Act.

We are also, of course, influenced in reaching our decision particularly by the case of Garcia v. Guerra, 744 Fed.2nd 1159. In this case the Fifth Circuit decided that a change in the standard election date for a general election in Texas for an election in Texas was a change that was covered by the Section 5 of the Voting Rights Act. Under state law the Legislature had permitted this kind of election to be held on four different occasions, in January, April, August and November, and all four of those dates were provided by statute and all four of the dates reflected in that statute had been precleared and approved by the Department of Justice for dates upon which elections could be held.

The election at issue was to be held in August. Even though the August election date had been precleared as I've indicated by the Department of Justice in its statutory form, it nevertheless was a departure from the election date that was usually held in April, and the Fifth Circuit held clearly that the change of this election date from April to August was a change that was a change in practice that was required to be cleared with the Justice Department. It is clear based on that decision that the change in the date here, notwithstanding the provisions of the Mississippi state statute 23-5-171 that provide that it can be held at any time the Legislature may provide in a concurrent resolution, is a change in practice.

Now I would indicate to you that if there had been other elections in which there was no practice and based upon which we could say that no practice had been established that all constitutional elections were conducted in November, it would be quite different. Or if the state had been able to show that exceptions were made to the general rule that elections were held in November and that those exceptions were based upon some sort of consistent, logical reasoning that established a practice within itself and that this election was consistent with that practice, if those had been the facts, we could have faced a different situation, but we do not need to decide that issue because those are not the facts that we're confronted with.

Now we have held that this election is subject to the preclearance provisions of the Voting Rights Act of 1965. We are next confronted with the issue as to what remedy is required for this particular violation. We are convinced that the election should not be enjoined and it will not be enjoined. We base our conclusion on several factors. We are cognizant that while we may not consider the implication of racial discrimination in making the legal determination as to whether the subject changes be subjected to the preclearance procedures of the Voting Rights Act, we may nevertheless consider the implication of the statute, the seriousness of the violation, the impact upon the right to vote and upon the impact upon the minority citizens whom the act was intended to protect when we fashion a remedy.

First, we see no evidence here that there are racial implications in the decision to set the election in June instead of November. First, there has been no evidence adduced that would convince

us of that. With respect to the contention that fewer black persons may vote in November than in June, we have no grounds upon which to rest such an assumption, and we are convinced that the state had a legitimate interest in setting the election in June instead of November for the reasons that have been developed and referred to in the earlier part of this hearing.

It is important to the state that it implement the act pursuant to which the constitutional amendment authorizes sometime around July 1st and if the election were held in November, the usual scheduled time, the implementation of this particular act would be delayed and delayed to the detriment of the citizens of the State of Mississippi, not one county, not a dozen counties but 82 counties.

We think the fact that the election has already been set is another consideration. The election machinery is in place, the state is prepared to go forward with the election is another reason that we think that any injunction at this time is inappropriate. We do not see that this is a flagrant violation of the Voting Rights Act. It is not one, it seems to us, in which a remedy is required because of any misconduct on the part of the state or any deliberate evasion on the part of the state. The state has an arguable reason, it seems to us, though obviously not entirely persuasive, that the change was not subject to preclearance.

And finally with respect to the contention that this court issued an injunction recently enjoining elections in the judicial contests, we are not persuaded that that is applicable or relevant to the facts before us. The argument has been made that the injunction was necessary in that case and is likewise necessary here because of the confusion that will result to the voter. We do not find the same degree of confusion, if any confusion at all. In fact, we see no confusion as such that will be evident if this election is allowed to proceed.

Finally we should add as far as the state is concerned that this particular decision of ours is rather narrowly drawn as far as the remedy is concerned. We think that the state is negligent in having passed the law and set an election in which they knew or should have known that it could not be precleared within the 60 days that the Attorney General has to preclear an election. The court is not absolutely certain that the Attorney General would need that much time. But in any event, the time factor is something

that the Legislature ignored and we think inapprorpriately ignored.

Thus the effect of our holding today is to hold that the subject change is required to be precleared by the Department of Justice under Section 5 of the Voting Rights Act. Our remedy or our response to the request for an injunction is to deny the injunction so far as it enjoins the election. We do, however, enjoin the state from implementing any changes pursuant to the results of the election until such time as it obtains preclearance from the Justice Department or the United States District Court for the District of Columbia, as required by Section 5, or until further order of this court.

Does anyone have any request for a clarification?

This court is adjourned.

Mr. Wallace: No, Your Honor.

Mr. Martin: No, Your Honor.

(Court adjourned).

APPENDIX F

UNITED STATES DISTRICT COURT
Jackson Division

Civil Action No. J86-0373(L)

Eddie Burrell, Albert Butler, John D. Eggleston, Charles Johnson, Kenneth Vaughn, Individually and in their official capacities as members of the Claiborne County Board of Supervisors, Willie Buck, Sr., Stella H. Jennings, Gerald B. Mitchell, Jr., and William M. Moulder,
Plaintiffs

vs.

William A. Allain, Governor of Mississippi, Edwin Lloyd Pittman, Attorney General of Mississippi, Dick Molpus, Secretary of the State of Mississippi, in their official capacities and as members of Mississippi State Board of Election Commissioners, Mississippi State Board of Election Commissioners, and the State of Mississippi,
Defendants.

ORDER

This cause having come on for hearing on May 30, 1986, on the plaintiffs' request for the convention of a three-judge district court and motion for preliminary injunction, and the court having considered the pleadings and exhibits offered by the parties, having heard and considered the arguments of counsel, and being fully advised in the premises, finds:

1. This action brought under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, is required to be heard by a district court of three judges, pursuant to 28 U.S.C. § 2284.

2. The defendant State of Mississippi is a jurisdiction covered by the special provisions of Sections 4 and 5 of the Voting Rights Act of 1965, 42 U.S.C. §§ 1973b and 1973c.

3. House Concurrent Resolution No. 41, adopted by the Mississippi legislature at its 1986 session, requires the conduct of an election on the first Tuesday after the first Monday of June 1986. The State alleges that when the legislature set the date of June 3, 1986, to vote on H.C.R. No. 41, it was acting under Miss. Code Ann. § 23-5-171 (Supp. 1985), which provides, "Constitutional amendments shall be voted for at the time fixed by the concurrent resolution," but the court does not find it necessary to resolve this issue. Since 1980, 109 amendments have been proposed to the constitution of 1980. On 13 of the 109 proposed amendments, elections have been held at dates other than the dates of the November general election. Since November 1, 1964, 30 amendments have been proposed and 6 of them have been scheduled for election at times other than the November general election. The last non-November election on a proposed constitutional amendment was held in June 1970. Since 1970, 21 separate constitutional referenda have been held in November. This constitutes a standard, practice, or procedure with respect to voting under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. The holding of an election on a proposed constitutional amendment at a time other than the general election in November deviates from the State's prior custom and practice, and constitutes a change of a standard, practice, or procedure with respect to voting that must be approved under Section 5 of the Voting Rights Act of 1965. See *Garcia v. Guerra,* 744 F.2d 1159 (5th Cir. 1984).

4. Although defendant Pittman on May 6, 1986, requested the Attorney General of the United States approve the conduct of the election required by H.C.R. No. 41, the Attorney General of the United States has not yet indicated whether he will object to or preclear the conduct of the election required by H.C.R. No. 41. The sixty days within which he is entitled to consider the submission will not expire until after the date scheduled for the election under H.C.R. No. 41.

5. The plaintiffs are adult resident citizens of the State of Mississippi and registered voters of the State of Mississippi, and thus enjoy rights protected under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

6. The public interest will not be best served by enjoining the conduct of the election scheduled for June 3, 1986. The machinery

for the conduct of the election is already in place, and a delay in the election could complicate the assessment, levy, and collection of property taxes due for the year 1986. Although the State, through its legislature, was perhaps careless in setting a date for an election without granting sufficient time for the preclearance of that date as required by Section 5 of the Voting Rights Act, the State's violation of the Voting Rights Act is not flagrant because it had an arguable reason for considering that the setting of the election date was not subject to the provisions of Section 5. Whether there has been a change of standard, practice, or procedure with respect to voting that is subject to Section 5 preclearance is not determined by whether the conduct of the election has the purpose or effect of denying or abridging the right to vote on account of race or color, but we may consider evidence bearing upon that question in fashioning our remedy. Neither party has chosen to present such evidence. The court considers the absence of such evidence as a factor weighing in favor of the State's position that the conduct of the election should not be enjoined. Moreover, the rights of the plaintiffs may be adequately protected by enjoining the defendants from implementing the changes in the Mississippi Constitution brought about as a result of the election until such time, if any, as the conduct of the election required by H.C.R. No. 41 is properly approved pursuant to Section 5.

IT IS THEREFORE

ORDERED that the court hereby declares that H.C.R. No. 41, insofar as it schedules an election for the first Tuesday after the first Monday of June 1986, constitutes a change of a standard, practice, or procedure with respect to voting which must be approved under Section 5 of the Voting Rights Act of 1965. It is further

ORDERED that insofar as the Motion for Preliminary Injunction requests this court to enjoin the conduct of said election on June 3, 1986, the motion is hereby denied. It is further

ORDERED that the defendants are enjoined from approving, implementing, or administering in any manner the amendments to Section 112 of the Mississippi Constitution proposed by H.C.R. No. 41, should those amendments be approved by the voters at the election on June 3, 1986, until such time, if any, that the conduct of said election has been approved by the Attorney

General of the United States or the United States District Court for the District of Columbia, as required by Section 5 of the Voting Rights Act, or until further order of this court.

ORDERED this the 16th day of June, 1986.

E. Grady Jolly
UNITED STATES
CIRCUIT JUDGE

Tom S. Lee
UNITED STATES
DISTRICT JUDGE

Henry T. Wingate
UNITED STATES
DISTRICT JUDGE

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
Jackson Division
Jackson Division

Eddie Burrell, Albert Butler, John D. Eggleston, Charles Johnson, Kenneth Vaughn, Individually and in their Official Capacities as Members of the Claiborne County Board of Supervisors, Willie Buck, Sr., Stella H. Jennings, Gerald B. Mitchell, Jr., and William H. Moulder,
Plaintiffs,

vs.

William A. Allain, Governor of the State of Mississippi, Edwin Lloyd Pittman, Attorney General of the State of Mississippi, Dick Molpus, Secretary of State of the State of Mississippi, in their Official Capacities as Members of the Mississippi State Board of Election Commissioners, C.A. Marx, Nicki Martinson, and W.A. Wilkerson, in their Official Capacities as Members of the Mississippi State Tax Commission, Mississippi State Tax Commission and the State of Mississippi,
Defendants.

ORDER

This cause came before the court on the motion of the defendants for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Summary judgment is appropriate if it is shown that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The court having considered the memoranda with attachments submitted by the parties and having heard oral arguments, is of the opinion that:

(1) The plaintiffs' claim that Senate Concurrent Resolution 519 violates sections 2 and 5 of the Voting Rights Act does not involve a standard, practice or procedure with respect to voting. The defendants' motion for summary judgment on this issue is therefore granted;

(2) The plaintiffs' claim that House Bill 388 violates sections 2 and 5 of the Voting Rights Act does not involve a standard, practice or procedure with respect to voting. The defendants' motion for summary judgment on this issue is therefore granted;

(3) Genuine issues of material fact remain relating to the plaintiffs' claim that House Resolution 41 violates sections 2 and 5 of the Voting Rights Act. The defendants' motion for summary judgment on this issue is therefore denied; and

(4) Genuine issues of material fact remain relating to the plaintiffs' claim that House Resolution 41 violates the fourteenth and fifteenth amendments of the United States Constitution. The defendants' motion for summary judgment on this issue is therefore denied.

IT IS THEREFORE ORDERED that the defendants' motion for summary judgment is granted in part and denied in part as set forth above.

IT IS FURTHER ORDERED that the plaintiffs' Motion to Strike and for Partial Summary Judgment be granted with respect to the defendants' second, third and fourth defenses regarding the Tax Injunction Act insofar as they apply to the plaintiffs' voting rights claims concerning H.C.R. 41. The question whether the Tax Injunction Act bars the plaintiffs' fourteenth and fifteenth amendment claims is held under advisement.

ORDERED this the 17th day of November 1986.

E. Grady Jolly
UNITED STATES
CIRCUIT JUDGE

Tom S. Lee
UNITED STATES
DISTRICT JUDGE

Henry T. Wingate
UNITED STATES
DISTRICT JUDGE

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
Jackson Division

Civil Action No. J86-0373(L)

Eddie Burrell, et al.
Plaintiffs,

v.

William A. Allain, et al.,
Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Eddie Burrell, et al., plaintiffs in this action, hereby appeal to the Supreme Court of the United States from final judgment entered in this action on December 31, 1986, as amended by the judgment entered January 15, 1987.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,
Eddie Burrell, et al.
By Their Attorneys,
Phelps, Dunbar, Marks,
Claverie & Sims
By: _____
Michael B. Wallace

Phelps, Dunbar, Marks, Claverie & Sims
1080 Flynt Drive, Suite E
P.O. Box 55507
Jackson, Mississippi 39216
Tel: (601) 939-3895

CERTIFICATE OF SERVICE

I, Michael B. Wallace, do hereby certifiy that I have this day mailed a true and correct copy of the foregoing Notice of Appeal

to the Supreme Court of the United States to Richard Jones, Esquire, Attorney General's Office, P.O. Box 220, Jackson, MS. 39205.

This the 29th day of January, 1987.

Michael B. Wallace

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
Jackson Division

Civil Action No. J86-0373(L)

Eddie Burrell, Albert Butler, John D. Eggleston, Charles Johnson, Kenneth Vaughn, Individually and in their Official Capacities as Members of the Claiborne County Board of Supervisors, Willie Buck, Sr., Stella H. Jennings, Gerald B. Mitchell, Jr., and William H. Moulder
Plaintiffs,

vs.

William A. Allain, Governor of the State of Mississippi, Edwin Lloyd Pittman, Attorney General of the State of Mississippi Dick Molpus, Secretary of the State of Mississippi, in their Official Capacities as Members of the Mississippi State Board of Election Commissioners, C. A. Marx, Nicki Martinson, and W. A. Wilkerson, in their Official Capacities as Members of the Mississippi State Tax Commission, Mississippi State Tax Tax Commission and the State of Mississippi
Defendants.

PRETRIAL ORDER

...

3. The pleadings are amended to conform with this pretrial order.

4. The following claims (including claims stated in the complaint), counterclaims, third party claims, cross-claims, etc., have been filed.

Plaintiffs assert the following causes of action against all defendants:

a. The defendants failed to preclear the following standards, practices or procedures with respect to voting pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. Section 1973c:

(i) House Concurrent Resolution No. 41 ("H.C.R. No. 41") insofar as it sets the date for a special election (Counts I and II), authorizes the legislature to withdraw taxing authority from a county (Count VI), offers more than one amendment to be determined at a single election (Count VIII), and authorizes the legislature to provide for taxation of nuclear plants by a single majority (Count IX);

(ii) Senate Concurrent Resolution No. 519 ("S.C.R. No. 519") insofar as it sets the date for a special election (Count III), authorizes the legislature to withdraw taxing authority from a county (Count V) and offers more than one amendment to be determined at a single election (Count VII);

(iii) House Bill No. 388 ("H.B. No. 388") (Count X);

(iv) The change in Mississippi's practice, required by Miss. Code. Ann. § 23-5-141 (1972), of printing the entire concurrent resolution and the proposed amendment on the ballot with respect to the special elections required by H.C.R. No. 41 (Count IV), and S.C.R. No. 519 (Count XVII);

(v) The enactment of H.B. No. 388 without prior constitutional authorization (Count XI).

b. By enacting and administering S.C.R. No. 519, H.C.R. No. 41 and H.B. No. 388, the defendants violated the plaintiffs' right to equal protection guaranteed by the Fourteenth Amendment (Count XVI).

c. The defendant's conduct of the special elections required by S.C.R. No. 41 and S.C.R. No. 519 resulted in a denial or abridgement of the plaintiffs' right to vote on account of race or color in violation of § 2 of the Voting Rights Act of 1965 (Counts XII and XIII).

d. The imposition and application of H.B. No. 388, S.C.R. No. 519 and H.C.R. No. 41 have the purpose and

intent of denying or abridging the plaintiffs' right to vote on account of race or color in violation of § 2 of the Voting Rights Act of 1965 and the Fifteenth Amendment (Count XV).

e. The imposition and application of H.B. No. 388 resulted in a denial or abridgement of the right to vote on account of race or color in violation of Section 2 of the Voting Rights Act (Count XIV).

5. The basis for jurisdiction is:

Federal question: 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. §§ 1973c and 1973. A three judge court is required for the consideration of Counts I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XVII. Pursuant to § 2884 and 42 U.S.C. § 1973c the three judge court should exercise its pendent jurisdiction to consider Counts XII, XIII, XIV, XV and XVI.

There is the following jurisdictional question: Whether 28 U.S.C. § 1341, the Tax Injunction Act, precludes this Court from exercising jurisdiction in this case. The defendants further challenge the standing of plaintiffs to maintain this action. Defendants further contend that the Eleventh Amendment bars the litigation in this Court of certain issues and claims asserted herein.

...

7. The following is a *concise summary* of the ultimate facts as claimed by:

a. Plaintiffs:

During the 1986 legislative session, the Mississippi legislature passed H.B. No. 388, which deprived the Claiborne County Board of Supervisors of the right to assess and collect ad valorem taxes on the Gtand Gulf Nuclear Power Plant ("Grand Gulf"), and deprived the individual plaintiffs of the benefits of those revenues as residents and taxpayers of Claiborne County. At the same session, the legislature adopted H.C.R. No. 41, which proposed an amendment to Section 112 of the Mississippi Constitution authorizing the legislature to alter the tax status of Grand Gulf and to establish new assessment ratios for various classes of property. The defendants have also claimed that H.B. No. 388 is implicitly authorized by an earlier amendment to Section 112 adopted pursuant to S.C.R. No. 519, which was approved by the legislature in 1982. Both of those resolutions required holding

of special elections to approve the proposed constitutional amendments. The defendants have not claimed the existence of any other constitutional authority for the enactment of H.B. No. 388. Neither the conduct of these elections nor the substance of S.C.R. No. 519, H.C.R. No. 41 and H.B. No. 388 were precleared under Section 5 of the Voting Rights Act.

H.C.R. No.41 required the defendant Secretary of State to submit the proposed amendment to the electors at the special election to be held the first Tuesday after the first Monday in June. It had been the prior custom and practice of the defendants to hold such election on the first Tuesday after the first Monday in November, as is now required by a 1984 amendment to Miss. Code. Ann. § 23-5-203. Changing the election date to the month of June decreased from 7 months and 2 weeks to 6 weeks the amount of time between the passage of the legislation and the scheduled election date. The failure to obtain approval for this change before the election was a violation of Section 5 of the Voting Rights Act.

The conduct of the election also resulted in discrimination, in violation of Section 2 of the Act. This decrease between the passage of the legislation and the election date resulted in a shorter period of time for the primary opponents of the bill, black citizens, to rally support against the bill. The history of discrimination against blacks in Mississippi affected the ability of black voters to prepare in six weeks for the June election. Past discriminatory legislation and other official acts had prevented blacks from being elected to office at both state and local levels. Consequently, black politicians in state government are on the whole young and inexperienced and have not had time or the resources to form state-wide political networks like white politicians. When black political leaders need to educate the public about certain legislation they lack the necessary funds as well as the public and private political associations available to whites.

Consequently, when the legislature gave Claiborne County, a majority black county, six weeks to educate the public on H.C.R. No. 41, the black opponents to the legislation lacked the political networks and the resources to educate their allies. The past history of discrimination in Mississippi and the lack of resources simply prevented the plaintiffs from gearing up for the election in six weeks.

Blacks have generally supported constitutional amendments by a small majority. This pattern changes only when a concerted effort has been made over a significant period to educate blacks about the effect of a particular constitutional amendment. For instance, a massive campaign by the state media, elected officials, and teachers' groups produced a 65% black majority for the 1982 education amendment, even though whites opposed it. Its primary Senate sponsor admits that support for H.C.R. No. 41 decreased from the time of its passage. If black opponents had been granted more time by the legislature, the amendment could have been defeated.

The task the plaintiffs faced was complicated by the failure of the defendants to take any steps to explain H.C.R. No. 41 to the public prior to the election. Such press coverage as there was focused on the property tax reclassification provisions of the amendment, and ignored Grand Gulf altogether. The President-elect of the Mississippi Tax Assessors/Tax Collectors Association argued that the amendment would decrease taxes on homesteads; however, it has actually increased taxes on homesteads of low value, the only kind that most blacks can own, and it does not in fact cover all homestead property. The Executive Director of the association had asked the defendant Pittman for an interpretation of the amendment, but did not receive a response until after the election was over. The defendant State Tax Commission did not explain how it intended to interpret and apply the amendment until after the election. The Executive Director of the association testified that, although he had advised homeownerss to vote for the amendment, had he known the interpretations would be applied by the defendants Pittman and State Tax Commission, he would have campaigned vigorously against the amendment. Naturally, none of the plaintiffs took any steps to explain to the public the tax relief afforded prosperous homeowners would come at the expense of poor people, primarily blacks.

Both the 1982 and 1986 elections were further defective in that many counties failed to print the entire text of the proposed amendments on their voting machines, contrary to the requirements of Miss. Code Ann. § 23-5-141 (1972). The defendants violated Section 5 in failing to secure the approval of federal authorities for this departure from Mississippi law.

Moreover, the absence of the text of these amendments contributed to the discriminatory results of both elections, in that voters who wished to learn the details of those amendments were unable to do so at the polls. The 1982 election was further discriminatory in that officers of the defendant State of Mississippi assured the plaintiffs through their representatives in the legislature that the amendment would have no effect on the county's ability to tax Grand Gulf. This, in 1982 the plaintiffs were completely deprived of their opportunity to defend their interests at the special election, since they did not even know that their interests were being threatened.

S.C.R. No. 519, H.C.R. No. 41, and H.B. No. 388, which together divest Claiborne County of its taxing authority on Grand Gulf, have been tainted by intentional racial discrimination. The State's original justification for singling out Grand Gulf for special treatment was that it was not feasible to treat non-nuclear power plants the same way; the State has now admitted this assertion to be false, and it has offered no other justification. Many members of the legislature have indicated in public and in private that the government of Claiborne County could not wisely spend its tax money from Grand Gulf, thus displaying stereotypically demeaning attitudes toward blacks. The only possible basis for the different treatment accorded to Claiborne County, as opposed to other counties with electrical generating plants such as Harrison, Jackson, and Hinds Counties, is that Claiborne County is governed by blacks, while the other counties are governed by whites. Moreover, both S.C.R. No. 519 and H.C.R. No. 41 operate to shift the ad valorem tax burden from whites toward blacks, as they were intended to do.

b. Defendants:

This action has been brought by nine individual plaintiffs. It has never been certified as a class action on behalf of any particular or discrete group. The district court lacks subject matter jurisdiction of this action pursuant to the Tax Anti-Injunction Act, 28 U.S.C. § 1341, and related principles of comity, equity, and federalism. Moreover, the individual plaintiffs lack standing to challenge the measures in question, and the Eleventh Amendment bars the litigation in this Court of certain state law issues and claims asserted by plaintiffs.

As stated in defendants' Motion to Dismiss and/or for

Summary Judgment, it is defendants' position that every claim made by plaintiffs against them in the complaint is either clearly resolvable in defendants' favor as a matter of law or that plaintiffs have no probative evidence to support their claims.

In challenged part, S.C.R. No. 519, adopted by the Legislature and ratified by the electorate in November 1982, amended § 112 of the Mississippi Constitution to permit the Legislature to exempt particular species of property from ad valorem taxes. H.C.R. No. 41, adopted by the Legislature and ratified by the electorate in June 1986, amended § 112 of the Mississippi Constitution and clarified the Legislature's authority to deny a situs county the right to impose ad valorem taxes on nuclear generating plants and to provide for a special mode of assessment and levy on such nuclear plants and for the distribution of tax revenue from same. H.B. No. 388, passed by the Mississippi Legislature in 1986, withdrew from a situs county (Claiborne County) the authority to levy ad valorem taxes on a nuclear power plant (Grand Gulf), required that the utility which owned Grand Gulf make payments to the State Tax Commission in lieu of ad valorem taxes, and provided for a method of distribution of the in lieu payments back to the situs county and other counties served by the utility.

In law and in fact, no aspect of the substance, method of adoption, conduct of election, election date, or otherwise regarding H.C.R. No. 41 violated § 5 of the Voting Rights Act, 42 U.S.C. § 1973c or § 2 thereof, 42 U.S.C. § 1973, in that, as the case may be, (a) H.C.R. No. 41 is not in subtance a "standard, practice, or procedure" with respect to voting, and/or (b) there was no "change" from any practice or procedue with respect to voting which has not been precleared or that was different from that in force and utilized in November 1964, and/or (c) no action of defendants had the purpose or effect of denying these plaintiffs the right to vote or an opportunity to participate in the political process on the basis of race, or had a "potential" for discrimination affecting voting, and/or (d) the alleged conduct is not attributable to the state defendants, and/or (e) the issues presented are of state law which have been adversely decided to plaintiffs.

Insofar as plaintiffs seek to challenge H.B. No. 388, H.C.R. No. 41, or S.C.R. No. 519 under the Equal Protection Clause of the Fourteenth Amendment, none of the measures were in fact

enacted for a racially-discriminatory purpose, and plaintiffs have no probative evidence that they were. Moreover, insofar as plaintiffs seek to make a traditional equal protection challenge, they cannot meet their burden of demonstrating that the measures are wholly arbitrary or irrational, and defendants submit that legitimate and rational reasons plainly exist for each of the enactments.

8. The following facts are established by the pleadings or by stipulation or admission:

a. Since 1965 the State of Mississippi has been and is covered by the suspension of tests provision (Section 4) and the preclearance provision (Section 5) of the Voting Rights Act of 1965.

b. Four of the five elected supervisors of Claiborne County are black.

c. All of the elected officials of the city of Port Gibson are white.

d. The population of the Mississippi Power and Light Company service area, throughout which the revenues of Grand Gulf Nuclear Power Plant will be spread pursuant to H.B. No. 388, is majority white.

e. As a result of the ratification of H.C.R. No. 41, the statewide tax burden will be reduced on property in Class I as defined therein, and increased on all of the other classes.

f. According to the United States Census, decennial population statistics for the State of Mississippi are as follows:

Year	Total Pop.	Black(%)	(%) Black VAP
1960	2,178,141	915,743 (42.04)	422,273 (35.98)
1970	2,216,994	815,770 (36.79)	431,617 (31.43)
1980	2,530,638	887,206 (35.20)	529,820 (31.04)

g. Both parties agree that it is possible to set up a structure whereby the ad valorem taxes collected on non-nuclear power generating plants are redistributed throughout the area which they serve, but the defendants deny that such a structure is practical.

h. The Boards of Supervisors of Forrest, Harrison, Jackson, Lauderdale, Adams, Bolivar, Hinds, Warren, and Washington Counties are majority white.

i. By 1982 only an estimated 5.7% of the black voting age population of Mississippi was registered to vote.

j. According to W. B. Reynolds, who is the United States Assistant Attorney General for Civil Rights, since the Voting Rights Act was passed, 42 Mississippi counties—more than in any other state—have been designated for federal examiners (registrars) under the Voting Rights Act, and between 1975 and 1981 federal observers have been sent to observe elections in numerous Mississippi counties.

k. Mississippi had a long history of *de jure* and *de facto* race discrimination. That history includes the use of such discriminatory devices as poll taxes, literacy tests, residency requirements, white primaries, and the use of violence to intimidate blacks from registering for the vote.

l. In *Boykins v. City of Hattiesburg*, Civil Action No. H77-0062(C), Opinion, p. 12 (S.D. Miss. March 2, 1984), a federal district court found:

> This evidence clearly shows that there remains today the lingering effect of past discrimination in the operation of the office of the Circuit Clerk of Forrest County, which directly affects the right of black persons residing in Hattiesburg to register to vote.

m. In *Jordan v. City of Greenwood*, 599 F. Supp. 397, 400-01 (N.D. Miss. 1984), a federal district court found: "As this Court has heretofore found, it is well documented that a pattern of racial discrimination in the past has existed in Leflore County, Greenwood and Mississippi...."

n. In *Pendleton v. Hood*, Civil Action No. J83-0519(B) Order and Memorandum Opinion, p. 3 (S.D. Miss. October 20, 1983), a federal district court found: "Some evidence presented to this Court shows still today there exists present discrimination against the black citizens and voters in Copiah Count.

o. In *Donnell v. United States and Eddie Thomas, Sr.*, Civil Action No. 78-0392, Opinion, p. 7 (D.D.C. July 31, 1979), a federal district court stated: "Warren County's past history of discrimination in voting continues to affect black persons in the county, causing a lesser participation by blacks than whites in the political process."

p. In *State of Mississippi v. United States*, 490 F. Supp. 569,575 (D.D.C. 1979), a federal district court found:

> The effects of Mississippi's past history of racial discrimination in voting and other areas continues to affect

black people in many portions of the state today, which has resulted in a general lower participation by blacks than whites in the political process.

q. According to the 1980 census estimates based upon samples, in the State of Mississippi median family income (excluding, among others, the value of income "in kind" from food stamps, public housing subsidies, and medical care) for whites (all current 1980 dollars) was $17,264.00, and the median family income (excluding, among others, the value of income "in kind" from food stamps, public housing subsidies, and medical care) for blacks was $9,013.00, which was 52.21% of the median family income for whites.

r. According to the 1980 census estimates based upon samples, in the State of Mississippi of the 587,450 persons whose income (including, among others, the value of income "in kind" from food stamps, public housing subsidies, and medical care) in 1979 was determined to be below the poverty level, 383,971 were black, which is 65.35% of the total, and 44.4% of all black persons whose poverty status was determined had incomes (excluding, among others, the value of income "in kind" from food stamps, public housing subsidies, and medical care) below the poverty level, as compared with 12.6% of all white persons whose poverty status was determined.

s. According to the 1980 census estimate based upon samples, in the State of Mississippi for persons twenty-five years old and older the median years of school completed for whites was 12.4 years and the median years of school completed for blacks was 9.4 years. According to the same census table, 3.5% of the white persons twenty-five years of age and older had less than five years of elementary school, as compared with 16.7% of black persons twenty-five years of age and older; 63.9% of white persons twenty-five years of age or older were high school graduates, as compared with 32.7% of black persons twenty-five years of age and older; and 14.4% of white persons twenty-five years of age and older had four or more years of college, as compared with 7.1% of black persons twenty-five years of age and older.

t. According to the 1980 census estimate based upon samples, in the State of Mississippi as of 1980, 2.8% of whites sixteen years of age and over were unemployed, as compared with 6.6% of blacks sixteen years of age and older. Of 181,216 persons sixteen

years of age and over employed in managerial and professional specialty occupations, 149,860 (82.70%) were white and 30,050 (16.58%) were black; of 241,786 persons sixteen years of age and over employed in technical, sales, and administrative support occupations, 206,645 (85.47%) were white and 33,838 (14.0%) were black; of 115,426 persons sixteen years of age and over employed in service occupations, 55,275 (47.89%) were white and 59,043 (51.15%) were black; and 22.9% of employed black persons sixteen years of age and over were employed in service occupations.

u. According to the 1980 census, in the State of Mississippi the median value of white-owned, occupied housing units was $35,400.00, and the median value of black-owned, occupied housing units was $20,500.00; 1.7% of white occupied housing units lacked complete plumbing for exclusive use, as compared with 15.7% of black-occupied housing units; and 3.1% of white-owned housing units had 1.01 or more persons per room, as compared with 19.3% of black-occupied housing units.

v. According to the 1980 census estimates based upon samples, in the State of Mississippi of 576,306 white-occupied housing units, 38,931 (6.76%) had no vehicle available at home for the use of the members of the household; of 256,151 black-occupied housing units, 68,390 (27.78%) had no vehicle available at home for the use of the members of the household; and of a total of 107,968 occupied housing units in Mississippi with no vehicle available at home for the use of members of the household, 68,390 (64.34%) were occupied by blacks.

w. According to the *Mississippi Statistical Abstract, 1984*, the Mississippi State Board of Health reported for 1982 that the Infant mortality rate for whites was 10.4 per 1,000 live births, and for non-whites was 20.9 per 1,000 live births.

x. The three-judge court in *Jordon v. Winter,* 604 F. Supp. 807, 812 (N.D. Miss. 1984), *aff'd sub nom. Mississippi Republican Executive Committee v. Brooks,* __ U.S. __, 105 S. Ct. 416 (1984), found:

> That evidence of socio-economic disparities between blacks and whites in the Delta area and the state as a whole is also probative of minorities' unequal access to the political process in Mississippi. Blacks in Mississippi, especially in its Delta region, generally have less education, lower

incomes, and more menial occupations than whites. The State of Mississippi has a history of segregated school systems that provide inferior education to blacks. *See* United States Commission on Civil Rights, *Voting in Mississippi*, pp. 3-4 (1965). Census statistics indicate lingering effects of this past discrimination: the median family income in the Delta Region (Second District) for whites is $17,467, compared to $7,447 for blacks; more than half of the adult blacks in the Second District have attained only 0 to 8 years of schooling, while the majority of white adults in this District have completed four years of high school; the unemployment rate for blacks is two to three times that for whites; and blacks generally live in inferior housing.

y. In *Moore v. Leflore County, Mississippi,* Civil Action No. GC83-249-WK-O, Memorandum of Decision, p. 8, (N.D. Miss. June 5, 1985) a federal district court found: "The disadvantages of blacks in education, income, employment, living conditions, and health render their participation in political affairs less effective...."

z. In *Lucas v. Bolivar County, Mississippi,* Civil Action No. D.C. 83-136-WK-O, Memorandum of Decision, p. 14, a federal distrct court found: "The disparities between blacks and whites in education and income...do, to some extent, hinder the ability of blacks to participate fully in the electoral process."

aa. In *Jordan v. City of Greenwood,* 599 F. Supp. 397, 401 (N.D. Miss. 1984),

> The Court found: Socio-economic data show that blacks are substantially disadvantaged compared to whites in education, income, poverty status, employment, living conditions, and health. These disadvantages have contributed to decrease black political participation in Greenwood and make that participation less effective.

bb. In *Jordan v. Winter, supra*, the three-judge district court found:

> Plaintiffs have established that voters in Mississippi have previously voted and continue to vote on the basis of the race of candidates for elective office. ...
> Plaintiffs' proof also based on analysis of these [1982 primary and general] election returns, demonstrated a consistently high degree of racially polarized voting in the

1982 election and previous elections. From all evidence, we conclude that blacks consistently lose elections in Mississippi because the majority of voters choose their preferred candidate on the basis of race. We therefore find racial bloc voting operates to dilute black voting strength in congressional districts where blacks constitute a minority of the voting age population.

cc. In *Jordan v. City of Greenwood*, 599 F. Supp. 397, 402 (N.D. Miss. 1984), the Court found:

> [T]he unchallenged expert opinion, based upon statistical evidence, shows an extraordinarily high level of racial bloc voting, with little crossover voting of whites for black candidates or blacks for white candidates.

dd. H.B. No. 387 provides for the distribution of all in lieu funds received from the Tennessee Valley Authority and not only those funds attributable to the Yellow Creek Nuclear Reactor, which is defunct and does not generate electrical power.

ee. The cost of privately-owned electical generating plants, whether nuclear or conventional, are ultimately borne by the consumers such plants serve.

ff. A greater proportion of the electrical power generated by Grand Gulf is sold outside the State of Mississippi as compared to any other electrical generating plant located within the State of Mississippi.

gg. By letter of July 7, 1986, the Justice Department stated it had no objection to the date of holding the referendum election on the proposed amendment in H.C.R. No. 41. The defendants did not preclear any other action challenged in this case prior to administering those actions.

hh. As of 1961, only 6.2% of the black voting age population in Mississippi was registered to vote.

ii. The Grand Gulf Nuclear Plant is presently the only existing and operating nuclear electrical generating plant in Mississippi.

jj. The Mississippi Power Company Plant in Jackson County sells some of its power outside of Mississippi.

kk. The Mississippi legislature in 1966 adopted H.B. 183, requiring that the superintendent of education in eleven counties be appointed by the county boards of education, and allowing all other counties to conduct a referendum on whether the superintendent should be appointed or elected. Nine of the eleven

counties in which the appointment of the county school superintendent was required, including Claiborne County, had black population majorities. The defendants also assert that this action was taken because the school superintendents for these eleven counties had no responsibility for buildings or students.

The parties reserve the right to object to the admission of these stipulations on the ground of relevancy.

...

THIS the 26th day of November, 1986.

E. Grady Jolly, Jr.
UNITED STATES
CIRCUIT JUDGE

Tom S. Lee
UNITED STATES
DISTRICT JUDGE

Henry T. Wingate
UNITED STATES
DISTRICT JUDGE

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
Jackson Division

Civil Action No. J86-0373(L)

Eddie Burrell, et al.,
Plaintiffs,

v.

William A. Allain, et al.,
Defendants.

DEFENDANTS' SECOND SUPLEMENTAL RESPONSE TO PLAINTIFFS' REQUESTS FOR ADMISSIONS

...

Request No. 9:

In its 1954 regular session the Mississippi Legislature adopted a resolution to amend Section 244 of the Mississippi Constitution to require applicants for voter registration to demonstrate "a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government." Miss. Laws, 1954, Chap. 427, a true and correct copy of which is attached hereto as Exhibit 2. The proposed constitutional amendment exempted all persons registered to vote before January 1, 1954. In the campaign for its ratification, proponents of the Amendment stated that its purpose was "solely to limit Negro registration." *Jackson Daily News*, October 28, 1954. The amendment was adopted by referendum in November, 1954. This constitutional amendment was then implemented by the Mississippi Legislature in its extraordinary session in January, 1955. Miss. Laws, 1955 Extra. Sess., Chap. 104, a true and correct copy of which is attached hereto as Exhibit 3. *Voting in Mississippi*, p. 6.

Response:

Denied. These defendants admit that in 1954 at this regular session the Mississippi Legislature adopted a resolution proposing an amendment to Section 244 of the Mississippi Constitution of 1890 which provided in part that an elector shall demonstrate "a reasonable understanding of the duties and obligations of citizenship under a constitutional form of goverment...", and that new or additional qualifications imposed by that section shall not be required of any person who was a duly registered and qualified elector of this state prior to January 1, 1954, 1952 Miss. Laws ch. 427; that the amendment was ratified at an election in November, 1954; and that this amendment was placed into effect by the Mississippi Legislature at its extraordinary session in 1955, 1955 Miss. Laws (Extra. Sess.) ch. 104. The defendants also admit that Exhibit 2 is a true and correct copy of 1954 Miss. Laws ch. 427 and that Exhibit 3 is a true and correct copy of 1955 Miss. Laws (Extra Sess.) ch. 104.

Request No. 10:

In 1960, the Mississippi Constitution was amended to require "good moral character" as a qualification for voting, Miss. Const., Art. 12, § 241-A (1960), a true and correct copy of which is attached hereto as Exhibit 4.

Response:

Denied. These defendants admit that the Mississippi Constitution of 1890 was amended in 1960 to insert a section which provided that qualified electors "shall be of good moral character," Miss. Const. Art. 12, § 241-A, that Exhibit 4 is a true and correct copy of said section, and that this section was repealed in 1965.

Request No. 11:

In 1962, a number of other provisions relating to voter registration were enacted by the Mississippi Legislature, including laws requiring that an (a) applicant demonstrate "good moral character" (Miss. Laws, 1962, Chap. 569, § 1); (b) that applicants fill in all blanks on the application "properly and responsively" without assistance (Miss. Laws, 1962, Chap. 570, § 1); (c) that registrars be prohibited from

telling an applicant why they were rejected (Miss. Laws, 1962, Chap. 571, § 2); (d) that all applicants' names be published in the newspaper (Miss. Laws, 1962, Chap. 572, § 1); (e) that any applicant's qualifications could be challenged by any voter (Miss. Laws, 1962, Chap. 573, § 2), and (f) that all designation of race be eliminated from county poll books (Miss. Laws, 1962, Chap. 574, § 1).

Response:

Denied. These defendants admit that in 1962 the Mississippi Legislature enacted the following statutes regulating voter registration: 1962 Miss. Laws ch. 569. § 1, which, among other things, enforced the requirement of Section 241-A of the Mississippi Constitution that anyone registering to vote shall be of good moral character by specifying that the application forms for voter registration ask certain questions which were designed, among other things, "to demonstrate to the county registrar that applicant is a person of good moral character as required by Section 241-A of the Constitution of Mississippi"; 1962 Miss. Laws ch. 570 § 1, which provided that voter registration applications were to be "properly and responsively filled out by the applicant" without assistance except that the county registrar could fill out the application based upon the unassisted dictation of an applicant who was physically disabled from writing his application; 1962 Miss. Laws ch. 571, § 2 which provided that the registrar was to endorse the word "failed" on the application, without specifying the reasons, of any applicant who had not complied with the Constitution and laws of this state governing entitlement to vote; 1962 Miss. Laws ch. 572, which required the newspaper publication of the names and addresses of applicants; 1962 Miss. Laws ch. 573, § 2, which provided a method by which any qualified elector of the county might challenge "the good moral character of any applicant and any other requirement of any applicant to vote"; and 1962 Miss. Laws ch. 574, which amended Section 3232 of the Mississippi Code of 1942, Recompiled, so as to eliminate from the poll book the color of the electors appearing thereon.

...

Request No. 61:

In 1980, the State of Mississippi adopted constitutional provisions such as literacy tests and a poll tax which were designed to exclude blacks from participation in the political process.

Response:

The defendants deny that such action was taken in 1980. However, the defendants admit such action was taken in 1890.

Request No. 62:

In 1954, following a decision of the Court of Appeals for the Fifth Circuit in *Peay v. Cox,* 190 F. 2d 123 (5th Cir. 1951), *cert. denied*, 342 U.S. 896 (1951), the Mississippi Constitution was amended to require that an applicant be able to read and copy any section of the constitution, and give a reasonable interpretation thereof to the registrar, and demonstrate to the registrar "a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government." (Miss. Const. § 244).

Response:

The defendants admit that *Peavy v. Cox* was decided in 1951, and the defendants further admit that in 1954 the Mississippi Constitution was amended as stated above. However, the defendants deny any causal connection between the two events.

Request No. 63:

Mississippi has in the past used such devices as the literacy test, the poll tax and the white primary to exclude its black citizens from participation in the electoral process. Indeed, until passage of the Voting Rights Act in 1965, use of racially discriminatory tests and devices effectively excluded blacks in Mississippi from exercise of the franchise.

Response:

Admitted.

Request No. 64:

"An issue [in the 1966 congressional redistricting process] proponents had hoped to keep 'under wraps' to shelter the far-reaching aspects of the [Representative Kenneth Williams] bill was opened on the floor by two opponents. It was the obvious five-way split of the Negro population to minimize its influence at the polls. Although that was an obvious purpose of the realignment of the counties in the Williams bill proponents had sought to keep it from arising on the floor." Memphis *Commercial Appeal*, 1/16/66.

Response:

Admitted.

Request No. 65:

Request No. 66:

The following colloquy took place on the House floor in 1966 during considerations of H.B. No. 63. Rep. Odie Trenor asked: "Did the Negro situation enter in this redistricting plan?" When he got no reply, he said "we all know the Negro situation was the main factor." Rep. Thompson McLellan of Clay said that they were moved so there shall not be a majority of certain groups in the district. This was patently drawn in a manner to devalue the vote of a cetain group of people. A news article explained that "legislators frequently refrain from using the word 'Negroes' and refer to Negroes as 'a certain group' ". Jackson *Clarion-Ledger*, 1/14/66. Jackson *Clarion-Ledger*, 1/19/66.

Response:

Admitted.

...

Respectfully submitted,

Edwin Lloyd Pittman, Attorney General
State of Mississippi

Richard G. Jones
Special Assistant Attorney General

Robert E. Sanders
Special Assistant Attorney General

T. Hunt Cole, Jr.
Special Assistant Attorney General
By _____
Robert E. Sanders.

Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205
Telephone: (601) 359-3680

APPENDIX K

U.S. Constitution, Fourteenth Amendment:

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Fifteenth Amendment:

§1. The right of citizens of the United States to vote shal not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

28 U.S.C. § 1341. Taxes by States.

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

42 U.S.C. § 1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political

subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973c. Alteration of voting qualifications and procedures; action by State or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standards, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced wihout such proceeding if the qualification, prerequisite, stan-

dard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

MISS. CONST., ART. 4, § 70 (1972)

No revenue bill, or any bill providing for assessments of property for taxation, shall become a law except by a vote of at least three-fifths of the members of each house present and voting.

MISS. CONST., ART. 4, § 112 (1972)

Taxation shall be uniform and equal throughout the state. Property shall be taxed in proportion to its value. Property shall be assessed for taxes under general laws, and by uniform rules, and in proportion to its value. But the legislature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for paticular species of property belonging to persons, corporations, or associations not situated wholey in one county. But all such property shall be assessed in proportion to its value, and no county, or other taxing authority, shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county. But the legislature may provide a special mode of assessment, fixing the taxable year, date

of the tax lien, and method and date of assessing and collecting taxes on all motor vehicles.

MISS. CONST., ART. 15, § 273 (1972)

Whenever two thirds of each house of the Legisature, which two thirds shall consist of not less than a majority of the members elected to each house, shall deem any change, alteration, or amendment necessary to this Constitution, such proposed amendment, change or alteration shall be read and passed by two-thirds vote of each house, as herein provided: public notice shall then be given by the secretary of state at least thirty days preceding an election, at which the qualified electors shall vote directly for or against such change, alteration or amendment, and if more than one amendment shall be submitted at one time, they shall be submitted in such manner and form that the people may vote for or against each amendment separately; and, notwithstanding the division of the Constitution into sections, the Legislature may provide in its resolution for one or more amendments pertaining and relating to the same subject or subject matter, and may provide for one or more amendments to an article of the Constitution pertaining and relating to the same subject or subject matter, which may be included in and voted on as one amendment; and if it shall appear that a majority of the qualified electors voting directly for or against the same shall have voted for the proposed change, alteration or amendment, then it shall be inserted as a part of the Constitution by proclamation of the Secretary of State certifying that it received the majority vote required by the Constitution; and the resolution may fix the date and direct the calling of elections for the purposes thereof.

SENATE CONCURRENT RESOLUTION NO. 519

A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO SECTION 112, MISSISSIPPI CONSTITUTION OF 1890, TO PROVIDE FOR THE CLASSIFICATION OF PROPERTY FOR AD VALOREM TAX PURPOSES; TO AUTHORIZE THE LEGISLATURE TO ESTABLISH ASSESSMENT RATIOS FOR UP TO FOUR CLASSIFICATIONS OF PROPERTY; AND FOR RELATED PURPOSES.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, TWO-THIRDS OF THE SENATE AND HOUSE OF REPRESENTATIVES CONCURRING

THEREIN, WHICH TWO-THIRDS CONSISTS OF NOT LESS THAN A MAJORITY OF THE MEMBERS ELECTED TO EACH HOUSE, That the following amendment to the Mississippi Constitution of 1890 be submitted to the qualified electors of the state for ratification or rejection at an election to be held on the first Tuesday after the first Monday of November, 1982:

Amend Section 112, Mississippi Constitution of 1890, to read as follows:

Section 112. Taxation shall be uniform and equal throughout the state. All property not exempt from ad valorem taxation shall be taxed at its assessed value. Property shall be assessed for taxes under general laws, and by uniform rules, and in proportion to its true value according to the classes defined herein. The Legislature may, by general laws, exempt particular species of property from taxation, in whole or in part.

The Legislature shall provide, by general laws, the method by which the true value of taxable property shall be ascertained; provided however, in arriving at the true value of Class I property, the appraisal shall be made according to current use, regardless of location. The Legislature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particular species of property belonging to persons, corporations or associations not situated wholly in one county. But all such property shall be assessed in proportion to its value according to its class, and no county, or other taxing authority, shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county. The Legislature may provide a special mode of assessment, fixing the taxable year, date of the tax lien, and method and date of assessing and collecting taxes on all motor vehicles.

The assessed value of property shall be a percentage of its true value, which shall be known as its assessment ratio. The Legislature shall establish, by general laws, by a three-fifths (3/5) vote of each House, the assessment ratio on each class of property as defined herein, which ratio shall be uniform throughout the state upon the same class of property, provided that the assessment ratio of any one (1) class

of property shall not be more than double the assessment ratio on any other class of property. For purposes of assessment for ad valorem taxes, taxable property shall be divided into four (4) classes as follows:

Class I. Real property, except for real property included in Class IV.

Class II. Personal property, except for motor vehicles and personal property included in Class IV.

Class III. Motor vehicles.

Class IV. Public utility property, which is owned or used by public service corporations required by general laws to be appraised and assessed by the state; however, such property shall not include railroad and airline property or motor vehicles.

BE IT FURTHER RESOLVED, That the Secretary of State is hereby directed to give public notice of an election in the manner and for the time provided by Section 273, Mississippi Constitution of 1890; and an election is hereby called and fixed to be held on the first Tuesday after the first Monday in November, 1982, for the purpose of submitting this and other amendments to the Constitution to qualified electors of this state for approval or rejection, said election to be conducted and held as provided by law for statewide general elections.

HOUSE CONCURRENT RESOLUTION NO. 41 (AS ADOPTED BY HOUSE AND SENATE)

A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO SECTION 112, MISSISSIPPI CONSTITUTION OF 1890, TO PRESCRIBE ASSESSMENT RATIOS FOR REVISED PROPERTY CLASSES; TO PROVIDE THAT THE ASSESSMENT RATIO ON ONE CLASS OF PROPERTY SHALL NOT BE MORE THAN THREE TIMES THE ASSESSMENT RATIO ON OTHER CLASSES OF PROPERTY; TO PROVIDE THAT THE LEGISLATURE MAY DENY OR LIMIT A COUNTY OR OTHER TAXING AUTHORITY THE RIGHT TO LEVY COUNTY AND/OR SPECIAL TAXES ON NUCLEAR-POWERED ELECTRICAL GENERATING PLANTS; TO AUTHORIZE THE LEGISLATURE TO PROVIDE FOR A SPECIAL MODE OF VALUATION, ASSESSMENT AND LEVY UPON NUCLEAR-POWERED ELECTRICAL

GENERATING PLANTS AND PROVIDE FOR THE DISTRIBUTION OF THE REVENUE DERIVED THEREFROM.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, TWO-THIRDS (2/3) OF THE HOUSE OF REPRESENTATIVES AND THE SENATE CONCURRING THEREIN, WHICH TWO-THIRDS (2/3) CONSISTS OF NOT LESS THAN A MAJORITY OF THE MEMBERS ELECTED TO EACH HOUSE, That the following proposed amendment to the Mississippi Constitution of 1890 be submitted to the qualified electors of the state for ratification or rejection at an election to be held on the first Tuesday after the first Monday of June 1986.

Amend Section 112, Mississippi Constitution of 1890, to read as follow:

"**Section 112.** Taxation shall be uniform and equal throughout the state. All property not exempt from ad valorem taxation shall be taxed at its assessed value. Property shall be assessed for taxes under general laws, and by uniform rules, and in proportion to its true value according to the classes defined herein. The Legislature may, by general laws, exempt particular species of property from taxation, in whole or in part.

The Legislature shall provide, by general laws, the method by which the true value of taxable property shall be ascertained; provided, however, in arriving at the true value of Class I and Class II property, the appraisal shall be made according to current use, regardless of location. The Legislature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particular species of property belonging to persons, corporations or associations not situated wholly in one (1) county. All such property shall be assessed in proportion to its value according to its class, and no county, or other taxing authority, shall be denied the right to levy county and/or special taxes upon such assessment as in other cases of property situated and assessed in the county, except that the Legislature, by general law, may deny or limit a county or other taxing authority the right to levy county and/or special taxes on nuclear-powered electrical generating plants. In addition to or in lieu of any such county and/or special taxes on nuclear-powered electrical generating plants, the Legislature, by general

law enacted by a majority vote of the members of each house present and voting, may provide for a special mode of valuation, assessment and levy upon nuclear-powered electrical generating plants and provide for the distribution of the revenue derived therefrom. The Legislature may provide a special mode of assessment, fixing the taxable year, date of the tax lien, and method and date of assessing and collecting taxes on all motor vehicles.

The assessed value of property shall be a percentage of its true value, which shall be known as its assessment ratio. The assessment ratio on each class of property as defined herein shall be uniform throughout the state upon the same class of property, provided that the assessment ratio of any one (1) class of property shall not be more than three (3) times the assessment ratio on any other class of property. For purposes of assessment for ad valorem taxes, taxable property shall be divided into five (5) classes and shall be assessed at a percentage of its true value as follows:

Class I. Single-family, owner-occupied, residential real property, at ten percent (10%) of true value.

Class II. All other real property, except for real property included in Class I and IV, at fifteen percent (15%) of true value.

Class III. Personal property, except for motor vehicles and for personal property included in Class IV, at fifteen percent (15%) of true value.

Class IV. Public utility property, which is property owned or used by public service corporations required by general laws to be appraised and assessed by the state or the county, excluding railroad and airline property and motor vehicles, at thirty percent (30%) of true value.

Class V. Motor vehicles, at thirty percent (30%) of true value.

The Legislature may, by general law, establish acreage limitations on Class I property.

BE IT FURTHER RESOLVED, That the Secretary of State is hereby directed to give public notice of an election in the manner and for the time provided by Section 273 of the Constitution, for the purpose of submitting this and other proposed amendments to the Constitution to the qualified electors of this state for ratification or rejection, such election to be conducted and held on the first Tuesday after the first Monday of June 1986,

in the manner provided by law for statewide general elections.

Mississippi Code Ann. § 23-5-141 (1972). Further as to form of ballots; constitutional amendments, etc.

Whenever the question of a constitutional amendment, or other question or matter admitting of an affirmative or negative vote, is submitted to a vote of the electors, the amendment, question, or matter, shall be printed on the official ballot, together with the names of the candidates, if any and also the words "for" and "against," to be so arranged by the proper officer that the voter can intelligently vote his preference, by making a cross mark (X) opposite the word indicating his preference. And immediately following the title of each office shall be printed the words "vote for one," or "vote for two," or more, according to the number to be elected.

Mississippi Code Ann. § 23-5-203 (Supp. 1986). Elections to fill vacancies; how held.

Except as otherwise provided by law, the first Tuesday after the first Monday in November of each year shall be designated the regular special election day and on that day, an election shall be held to fill any vacancy in county, county district, and district attorney elective offices.

All special elections, or elections to fill vacancies, shall in all respects be held, conducted and returned in the same manner as general elections, except that where no candidate receives a majority of the votes cast in such election, then a runoff election shall be held two (2) weeks after such election and the two (2) candidates who receive the highest popular votes for such office shall have their names submitted as such candidates to the said runoff and the candidate who leads in such runoff election shall be elected to the office. When there is a tie in the first election of those receiving next highest vote, these two (2) and the one receiving the highest vote, none having received a majority, shall go into the runoff election and whoever leads in such runoff election shall be entitled to the office.

In those years when the regular special election day shall occur on the same day as the general election, the names of candidates in any special election and the general election shall be placed on the same ballot, but shall be clearly distinguished as general election candidates or special election candidates.

At any time a special election is held on the same day as a party primary election, the names of the candidates in the special election may be placed on the same ballot, but shall be clearly distinguished as special election candidates or primary election candidates.

Chapter 507, Mississippi Laws, 1986, House Bill No. 388.

AN ACT TO AMEND SECTION 27-35-309, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PAYMENTS IN LIEU OF AD VALOREM TAXES UPON NUCLEAR GENERATING PLANT PROPERTY AND TO DISTRIBUTE SUCH PAYMENTS TO THE SITUS COUNTY AND MUNICIPALITY, IF APPLICABLE, AND TO COUNTIES AND MUNICIPALITIES WHERE ELECTRIC SERVICE FROM SUCH POWER PLANT IS RENDERED; TO AMEND SECTIONS 37-19-11 AND 37-19-37, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A REDUCTION OF LOCAL SUPPLEMENT UNDER THE MINIMUM EDUCATION PROGRAM BECAUSE OF THE AD VALOREM TAX EXEMPTION OF NUCLEAR POWER PLANTS SHALL NOT RESULT IN LOSS OF STATE FUNDS; TO PROVIDE THAT THE MINIMUM LOCAL AD VALOREM TAX EFFORT FOR SUPPORT OF THE MINIMUM EDUATION PROGRAM REQUIRED OF A SITUS COUNTY SHALL NOT BE MORE THAN $200,000.00 FOR SCHOOL YEARS 1986-87 AND 1987-88; TO PROVIDE THAT THE SEVERANCE TAX DEDUCTION AGAINST THE STATE CONTRIBUTION TO THE MINIMUM EDUCATION PROGRAM SHALL BE PHASED IN WITH RESPECT TO CERTAIN COUNTIES WHERE IT DOES NOT CURRENTLY APPLY; AND FOR RELATED PURPOSES.

Be it enacted by the Legislature of the State of Mississippi:

Section 1. Section 27-35-309, Mississippi Code of 1972, is amended as follows:

27-35-309. (1) The State Tax Commission shall, if practicable, on or before the first Monday of June, and if impracticable, as soon thereafter as it can be done, in each year, make out for each county having any railroad, telegraph, sleeping car, palace car, dining car, express, gas (natural or artificial), street, suburban, and interurban railway (including motor bus companies operating as street cars) and pipeline company property therein; and any

telephone, waterworks or electric power and/or any electric light company property not situated wholly in one (1) county, therein, an assessment roll of such property, both real and personal, tangible and intangible, and the same may be in such forms as they may prescribe as nearly in conformity with ordinary assessment rolls as convenient and practicable. The State Tax Commission shall apportion the value of the property of all public utilities or other persons, companies, or associations assessed according to the provisions of this article, except as provided in subsection (3) of this section, as follows:

(a) When all the property of such public utility is located within the limits of a county, the assessed value thereof shall be apportioned by the State Tax Commission between the several municipalities, school districts, road districts, levee districts, and other taxing districts therein, in the proportion which the property located within the several municipalities, school districts, road districts, levee districts and other taxing districts in question, bears to the entire value of the property of such public utility, as ascertained and valued as herein provided, so that, to each municipality, school district, road district, levee district, and other taxing district contained therein there shall be apportioned such part of the entire valuation as will fairly equalize relative value of the property therein located, to the whole value thereof.

(b) When the property of such public utility is located in more than one (1) county in this state, the assessed value thereof shall be apportioned by the State Tax Commission between the several counties and the municipalities and taxing districts therein, in the proportion which the property located therein bears to the entire value of the property of such public utility as ascertained and valued, as herein provided, so that to each county and each municipality and taxing district therein, there shall be apportioned such part of the entire valuation as will fairly equalize the relative value of the property therein located to the whole value thereof.

(c) When the property of such public utility required to be assessed by the provisions of this article is located in more than one (1) state, the assessed value thereof shall be apportioned by the State Tax Commission in such manner as will fairly and equitably determine the principal sum for the value thereof in this state, and after ascertaining such value it shall be apportioned

by them as herein provided.

The assessment roll shall contain all the property of any such public utility, railroad, person, firm, or corporation and the value thereof, and so made that each county, municipality, and taxing district shall receive its just share of taxes proportionately to the amount of property therein situated.

(2) The assessment roll when made shall remain for one (1) month in the office of the State Tax Commission, and be for such time subject to the objections thereto which may be filed; but real estate belonging to railroads and which forms no part of the road, and is wholly disconnected from its railroad business, shall not be assessed on the rolls by the State Tax Commission, but shall be assessed as other real estate is assessed by the tax assessor of the county where situated.

(3) Any nuclear generating plant which is located in the state, which is owned or operated by a public utility rendering electric service within the state and not exempt from ad valorem taxation under any other statute and which is not owned or operated by an instrumentality of the federal government shall be exempt from county, municipal and district ad valorem taxes. In lieu of the payment of county, municipal and district ad valorem taxes, such public utility shall pay to the State Tax Commission a sum based on the assessed value of such nuclear generating plant in an amount to be determined and distributed as follows:

(a) The State Tax Commission shall annually assign an assessed value to any nuclear generating plant described in this subsection in the same manner as for ad valorem tax purposes by using accepted industry methods for appraising and assessing public utility property. The assessed value assigned shall be used for the purpose of determining the in-lieu tax due under this section and shall not be included on the ad valorem tax rolls of the situs taxing authority nor be subject to ad valorem taxation by the situs taxing authority nor shall be assessed value assigned be used in determining the debt limit of the situs taxing authority. However, the assessed value so assigned may be used by the situs taxing authority for the purpose of determining salaries of its public officials.

(b) On or before February 1, 1987, for the 1986 taxable year and on or before February 1 of each year thereafter, such utility shall pay to the State Tax Commission a sum equal to two percent

(2%) of the assessed value as ascertained by the State Tax Commission, but such payment shall not be less than Sixteen Million Dollars ($16,000,000.00) for any taxable year, all such payments in excess of Sixteen Million Dollars ($16,000,000.00) for any taxable year shall be paid into the General Fund of this state.

(c) After distribution of the payments as set forth in Section 2 of this act, the State Tax Commission shall distribute ten percent (10%) of the remainder of the payments to the General Fund of the state and the balance shall be distributed to the counties and municipalities in this state wherein such public utility renders electric service in the proportion that the amount of electric energy consumed by the retail customers of such public utility in each county, excluding municipalities therein, and in each municipality for the next preceding fiscal year bears to the total amount of electric energy consumed by all retail customers of such utility in the State of Mississippi for the next preceding fiscal year.

(d) No county, including municipalities therein, shall receive in excess of twenty percent (20%) of the funds distributed under paragraph (c) of this subsection.

(e) The revenues received by counties and municipalities under paragraph (c) of this subsection shall be included and considered as proceeds of ad valorem taxes for the purposes of the growth limitation on ad valorem taxes for the 1987 fiscal year and thereafter under Section 27-39-321 and 27-39-305.

Section 2. The in-lieu payments made to the State Tax Commission pursuant to Section 27-35-309(3)(b), excluding payments made in excess of Sixteen Million Dollars ($16,000,000.00) which are required to be paid into the General Fund of the state, shall be distributed by the State Tax Commission as follows:

(a) For fiscal year 1987, fifty percent (50%) of such payment shall be paid to the situs county wherein such nuclear generating plant is located;

(b) For fiscal year 1988, forty-five percent (45%) of such payment shall be paid to the situs county wherein such nuclear generating plant is located;

(c) For fiscal year 1989, forty percent (40%) of such payments shall be paid to the situs county wherein such nuclear generating

plant is located;

(d) For fiscal year 1990, thirty-five (35%) of such payment shall be paid to the situs county wherein such nuclear generating plant is located;

(e) For fiscal year 1991 and thereafter, thirty percent (30%) of such payment shall be paid to the situs county wherein such nuclear generating plant is located.

Section 3. Of the funds received pursuant to Section 2 of this act by a situs county wherein such nuclear generating plant is located, the board of supervisors of such situs county shall distribute ten percent (10%) of each payment, upon receipt, to the most populous incorporated municipality within the county; however, if such plant is located within a municipality, such payments which would otherwise be made to the situs county pursuant to Section 2 of this act shall be divided equally between the situs county and situs municipality.

Section 4. Of the funds retained by the situs county after the payment made pursuant to Section 3 of this act, not more than Five Million Five Hundred Thousand Dollars ($5,500,000.00) per year may be expended by the board of supervisors of the county for any purposes for which a county is authorized by law to levy an ad valorem tax, and any funds in excess of such amount shall be expended in accordance with Section 5 of this act.

Section 5. The board of supervisors of the situs county, upon receipt of the payments pursuant to Section 2 of this act less the payment made according to Section 3 of this act, shall pay all such funds in excess of Five Million Five Hundred Thousand Dollars ($5,500,000.00) to the governing authorities of the public school districts in such county in the proportion that the average daily attendance for the preceding scholastic year of each school district bears to the total average daily attendance of the county for the preceding scholastic year. Such funds may be expended only for the purposes of capital improvements to school facilities and only after plans therefor have been submitted to and approved by the Educational Finance Commission or its successor. The governing authorities of such school districts may borrow money in anticipation of receipt of payments pursuant to this section and the levying authority for the school district may issue negotiable notes therefor, for the purposes set forth

herein. Such loan shall be repaid from the payments received under this section by the governing authorities of the public school district.

Section 6. Section 37-19-11, Mississippi Code of 1972, is amended as follows:

37-19-11.No school district shall pay any teacher on the minimum foundation program less than the state minimum salary provided for in Section 37-19-7. No school district shall receive any funds under the provisions of this chapter for any school year during which the aggregate amount of local supplement as defined in Section 37-19-1 shall have been reduced below such amount for the previous year, however, where there has been a reduction in the number of teacher units in such district in such year, where there has been a reduction in the amount of federal funds to such district below the previous year, or where there has been a reduction in ad valorem taxes to such school district for the 1986-1987 school year below the amount for the previous year due to the exemption of nuclear generating plants from ad valorem taxation, pursuant to Section 27-35-309, the aggregate amount of local supplement in such district may be reduced proportionately without loss of funds under this chapter. No school district may receive any funds under the provisions of this chapter for any school year if the aggregate amount of support from ad valorem taxation shall be reduced during such school year below such amount for the previous year, however, where there is a loss in teacher units, or where there is or heretofore had been a decrease in the total assessed value of taxable property within a school district, the aggregate amount of such support may be reduced proportionately. Nothing herein contained shall prohibit any school district from adopting or continuing a program or plan whereby teachers are paid varying salaries according to the teaching ability, classroom performance and other similar standards.

Section 7. Section 37-19-37, Mississippi Code of 1972, is amended as follows:

37-19-37. (1) The total state funds needed annually by each county, excluding the separate school districts therein, for the support of the minimum education program shall be the cost of the minimum education program for that county as determined

in Section 37-19-3, less the minimum local ad valorem tax effort required of that county, as provided in Section 37-19-35, and less one-half (1/2) of all refunds of severance taxes made by the state to the county for the preceding year, provided, however, in the event that, during any county fiscal year, one-half (1/2) of all severance taxes returned or to be returned to such county from the State Tax Commission will be less than one-half (1/2) of all severance taxes returned to such county during the preceding fiscal year, the state funds for the support of the minimum education program shall be increased in the amount of such deficit. The foregoing provisions shall be fully applicable to the distribution of minimum education program funds to a district designated as a municipal separate or special municipal separate school district prior to July 1, 1986, which embraces an entire county, subject to the provisions of subsection (4) of this section. In any county wherein there is located a nuclear generating power plant on which a tax is assessed under subsection (3) of Section 27-35-309, the minimum local ad valorem tax effort required of the county for school year 1986-1987 and school year 1987-1988 shall not be more than Two Hundred Thousand Dollars ($200,000.00) per school year. In no case shall the total state funds provided in any year for the support of the minimum education program in any county be less than forty percent (40%) of the cost of the minimum education program for that county as determined by Section 37-19-3, and in the event the workings of this proviso should result in a lesser local contribution for the support of the minimum education program of the county than is otherwise required by this section, then the local funds otherwise required for the support of said minimum education program shall be reduced or eliminated in the following order of priority: (a) severance taxes; (b) the minimum local ad valorem tax effort.

(2) The total state funds needed annually by each separate school district for the support of the minimum education program in that district shall be the cost of the minimum education program for that district, as determined in Section 37-19-3, less the minimum local ad valorem tax effort required of that district, as provided in Section 37-19-35, and less than one-half (1/2) of all refunds of severance taxes made by the state to the municipality for the preceding year; provided, however, in the event that, during any municipal fiscal year, one-half (1/2) of all severance

taxes returned or to be returned to such municipality from the State Tax Commission will be less than one-half (1/2) of all severance taxes returned to such municipality during the preceding fiscal year, the state funds for the support of the minimum education program shall be increased in the amount of such deficit.

(3) The total state funds needed for the support of the minimum education program annually shall be the total of the amounts needed by all the counties and separate school districts in the state as provided in subsections (1) and (2) of this section.

(4) For any school district designated as a municipal separate or special municipal separate school district prior to July 1, 1986, which embraces an entire county, the following percentage reduction shall be substituted for the use of the ratio of one-half (1/2) as provided in subsection (1) hereinabove:

Fiscal Year	Percentage to be Applied
1987-1988	10%
1988-1989	20%
1989-1990	30%
1990-1991	40%
1991-1992	50%

This subsection (4) shall stand repealed from and after July 1, 1992.

Section 8. This act shall take effect and be in force from and after its passage.

Approved: April 23, 1986